

The Jew Taboo: Jewish Difference and the Affirmative Action Debate

DEBORAH C. MALAMUD*

One of the most important questions for a serious debate on affirmative action is why certain minority groups need affirmative action while others have succeeded without it. The question is rarely asked, however, because the comparison that most frequently comes to mind—i.e., blacks and Jews—is seen by many as taboo. Daniel A. Farber and Suzanna Sherry have breached that taboo in recent writings. Professor Malamud's Article draws on work in the Jewish Studies field to respond to Farber and Sherry. It begins by critiquing their claim that Jewish values account for Jewish success. It then explores and embraces alternative explanations—some of which Farber and Sherry reject as anti-Semitic—as essential parts of the story of Jewish success in America.

Jews are people who are not what anti-Semites say they are.¹

Jean-Paul Sartre ha[s] written that for Jews authenticity means not to deny what in fact they are. Yes, but it also means not to claim more than one has a right to.²

Defenders of affirmative action today are publicly faced with questions once thought improper in polite company. For Jewish liberals, the most disturbing question on the list is that posed by the comparison between the twentieth-century Jewish and African-American experiences in the United States. It goes something like this:

The Jews succeeded in America without affirmative action. In fact, the Jews have done better on any reasonable measure of economic and educational achievement than members of the dominant majority, and began to succeed even while they were still being discriminated against by this country's elite institutions. So why can't African Americans

* Professor, University of Michigan Law School. B.A., Wesleyan University; J.D., University of Chicago. My thanks to the organizers of the Symposium, *Twenty Years After Bakke: The Law and Social Science of Affirmative Action in Higher Education*, The Ohio State University College of Law, April 3–4, 1998, for which this Article was prepared. I dedicate it to the memory of Sylvia Plotkin at her first *yahrzeit*. My thanks to Hanoach Dagan, Michael Heller, Rick Pildes, Ted Shaw, and Eric Stein for helpful comments.

¹ ZYGMUNT BAUMAN, *MODERNITY AND AMBIVALENCE* 113 (1991) (quoting Philip Roth without citation). Bauman continues: "The anti-Semites—or, perhaps more correctly, the suspicious, watchful and vigilant housemasters—wrote the scenario for Jewish self-constructing and self-ennobling efforts by listing the traits for which the Jews stood condemned." *Id.*

² IRVING HOWE, *A MARGIN OF HOPE: AN INTELLECTUAL AUTOBIOGRAPHY* 282 (1982).

succeed without affirmative action? (The problem can't be that racism against blacks is more virulent than anti-Semitism. The Holocaust makes that assertion impossible.) So there must either be something very right with the Jews or something very wrong with the blacks—or perhaps both.³

The question is hardly new. Jewish neo-conservatives have been making the black-Jewish comparison for years.⁴ So have black civil rights leaders (albeit in a different tone of voice and with different intent).⁵ But Daniel A. Farber and Suzanna Sherry have gotten the attention of the legal academy by asking the question in a particularly incendiary way. My concern is that their treatment of the issues threatens to end the discussion of the lessons to be learned from the Jewish experience in America before it begins. My hope, in writing this Article, is to keep the discussion alive and to bring to bear upon it the significant work being done by scholars in the social sciences and humanities whose life work consists of considering the extent, cause, limits, and meaning of Jewish success.

³ The same question is often asked about Asians (at least *some* Asians), or at least the Chinese—a group whose success in diaspora often brings them into comparison with the Jews as “model minorities” or “middleman minorities” or “entrepreneurial minorities” employing a strategy for economic success on a global scale. For a comparative volume, see *ESSENTIAL OUTSIDERS: CHINESE AND JEWS IN THE MODERN TRANSFORMATION OF SOUTHEAST ASIA AND CENTRAL EUROPE* (Daniel Chirot et al. eds., 1997) [volume hereinafter cited as *ESSENTIAL OUTSIDERS*].

⁴ For descriptions of the neo-conservatives, the prominence of Jews in the group, and their position on issues of race, see GERTRUDE EZORSKY, *RACISM AND JUSTICE: THE CASE FOR AFFIRMATIVE ACTION* 57 & n.3 (1991); JONATHAN KAUFMAN, *BROKEN ALLIANCE: THE TURBULENT TIMES BETWEEN BLACKS AND JEWS IN AMERICA* 214 (2d ed. 1995); ALAN WALD, *THE NEW YORK INTELLECTUALS: THE RISE AND DECLINE OF THE ANTI-STALINIST LEFT FROM THE 1930s TO THE 1980s*, at 350–65 (1987). For a turnaround by a famed Jewish neo-conservative who in the past used the black-Jewish comparison to argue against multiculturalism and now uses the comparison conditionally to support it, see NATHAN GLAZER, *WE ARE ALL MULTICULTURISTS NOW* 96–121 (1997) (explaining that assimilation has been the key to the success of Jews and other groups, and that blacks have never been permitted to assimilate and therefore need special treatment).

⁵ See, e.g., MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY* 154–55 (1967) (“Jews progressed because they possessed a tradition of education combined with social and political action. The Jewish family enthroned education and sacrificed to get it. The result was far more than abstract learning. Uniting social action with educational competence, Jews became enormously effective in political life.”) For a general account of the depiction of the Jews in early black religious and civil-rights rhetoric, see Hasia R. Diner, *Between Words and Deeds: Jews and Blacks in America, 1880-1935, in STRUGGLES IN THE PROMISED LAND: TOWARD A HISTORY OF BLACK-JEWISH RELATIONS IN THE UNITED STATES* 92–94 (Jack Salzman et al. eds., 1977) [volume hereinafter cited as *STRUGGLES IN THE PROMISED LAND*].

I. FARBER AND SHERRY, "JEWISH VALUES," AND THE CRITIQUE OF CRITIQUES OF MERIT

In an article entitled *Is the Radical Critique of Merit Anti-Semitic?*,⁶ and in a more recent book in which the article is reprinted,⁷ Farber and Sherry use the posture of critical race theory—the claim of speaking “from the perspective of a historically oppressed group”—to speak as Jews against critical race theory.⁸ In particular, they speak in defense of the Jews by defending the merit criteria under which Jews have succeeded and blacks as a group thus far have failed.⁹ In so doing, Farber and Sherry breach the taboos that govern Jewish life in the academy—they talk about Jewish success¹⁰ (particularly taboo when done in direct comparison with black failure), and they embrace Jewish positionality (*i.e.*, claiming a privileged Jewish perspective) in support of Jewish self-interest (*i.e.*, shoring up the supposed meritocracy from which Jews have benefited).

Taboo-breaking can be a good thing, and I commend Farber and Sherry for owning up to a distinctly Jewish reaction to the meritocracy debate.¹¹ Not all Jewish academics lay claim to a “Jewish perspective.” Many Jewish academics do not experience themselves as Jews at all; others aim to separate their work from whatever Jewish life they choose to lead. But some of us, some of the time, experience ourselves as thinking the way we do because we are Jews.¹²

⁶ Daniel A. Farber & Suzanna Sherry, *Is the Radical Critique of Merit Anti-Semitic?*, 83 CAL. L. REV. 853 (1995) [hereinafter Farber & Sherry, *Radical Critique*].

⁷ See DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997) [hereinafter FARBER & SHERRY, *BEYOND ALL REASON*].

⁸ See Farber & Sherry, *Radical Critique*, *supra* note 6, at 856.

⁹ Farber & Sherry say much the same with regard to certain groups of Asian-Americans, who have also achieved disproportionate success in certain high-prestige fields of endeavor in the United States. For convenience, and in light of their declared focus and the specificity of my own approach in this Article, I shall speak only of the Jews and leave comments on Asians to another day.

¹⁰ See generally RICHARD L. ZWEIGENHAFT & G. WILLIAM DOMHOFF, *JEWS IN THE PROTESTANT ESTABLISHMENT* (1982) (raising the question of whether a book about successful Jews can ever be good for the Jews).

¹¹ I commend them also for having taken critical race theory seriously enough to mount an intellectual response to it. See Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993).

¹² For an example of an account of conflicting Jewish perspectives shaping conflicting jurisprudential perspectives, see Nomi M. Stolzenberg, *Un-Covering the Tradition of Jewish 'Dissimulation': Frankfurter, Bickel, and Cover on Judicial Review*, 3 S. CAL. INTERDISCIPLINARY L.J. 809 (1994). Stolzenberg discusses Jewish aspects of Robert Cover's work at length. See *id.*

Jewish liberals have been part of the “diversity” and “multiculturalism” debates as advocates for the rights of *others* to speak in particularistic voices. We should not be heard to deny that we occasionally speak in a particularistic voice of our own.¹³ Nor should we deny ourselves the right to try to make sense simultaneously of the black and Jewish experiences in America—for all that the direct comparison of the black and Jewish experiences can be fraught with political danger.¹⁴

Farber and Sherry posit the existence in critical legal scholarship of a “radical critique of merit,” which they define as the application of the principles of “radical constructivism” to the meritocracy debate. Radical constructivism is their term for the view that the existing concepts of truth and morality are “socially constructed aspects of systems of power.”¹⁵ This view, they argue, is endemic to the work of legal academics in the fields of critical legal studies, radical feminism, and critical race theory.¹⁶ When applied to the merit standards underlying the selection of candidates for jobs and university admissions, radical constructivism takes the form of what they call the “radical critique of merit”—the view that existing merit standards “are socially constructed to maintain the power of dominant groups. In other words, ‘merit’ has no meaning, except as a way for those in power to perpetuate the existing hierarchy.”¹⁷

Farber and Sherry do not reject milder forms of “social constructivism.” They are prepared to acknowledge, for example, that “categories defining

¹³ For an account of why multiculturalists generally do not include Judaism as one of the perspectives that ought appropriately be represented, see *INSIDER/OUTSIDER: AMERICAN JEWS AND MULTICULTURALISM* (David Biale et al. eds., 1998) [volume hereinafter cited as *INSIDER/OUTSIDER*]; see also *infra* note 213. Whether our position as Jews is one of a victim or a beneficiary of oppression in this country (or both to a degree), like all the questions currently debated in the field of Jewish cultural studies, is a question that can be asked only once we, as Jews, actually admit to having a position at all. For explorations of Jewish experiences in academia, see *PEOPLE OF THE BOOK: THIRTY SCHOLARS REFLECT ON THEIR JEWISH IDENTITY* (Jeffrey Rubin-Dorsky & Shelley Fisher Fishkin eds., 1996) [hereinafter *PEOPLE OF THE BOOK*].

¹⁴ For a sampling of the rich work that can come out of taking on the issue of black-Jewish relations, see *STRUGGLES IN THE PROMISED LAND*, *supra* note 5.

¹⁵ Farber & Sherry, *Radical Critique*, *supra* note 6, at 855.

¹⁶ Gary Peller, Duncan Kennedy, Catharine MacKinnon, Richard Delgado, and Jerome Culp are identified as leading exemplars—though, as we shall see, Farber and Sherry find “crit” bedfellows in very strange places—like in the mainstream historical work of G. Edward White. See G. EDWARD WHITE, *INTERVENTION AND DETACHMENT: ESSAYS IN LEGAL HISTORY AND JURISPRUDENCE* (1994) [hereinafter *WHITE, INTERVENTION*].

¹⁷ Farber & Sherry, *Radical Critique*, *supra* note 6, at 856 (footnote omitted).

social groups (such as homosexuals)" might be socially constructed.¹⁸ What they are not prepared to acknowledge is that our concepts of merit, truth, or morality might be socially constructed as well.¹⁹ Similarly, Farber and Sherry are open to milder critiques of reigning conceptions of "merit." They admit that "discrimination against some groups has denied them their due rewards" and that they "may not have been given a fair chance to acquire necessary skills"²⁰—concessions that combine to mean that our merit criteria may measure past privilege as much or more than they measure inner worth. But Farber and Sherry draw the line at the radical concept (as they see it) that a society's definitions of what it means to be "meritorious" are shaped by the interests of the powerful.

Farber and Sherry further contend that "[a]nti-semitic propositions are a nearly inescapable implication of the radical constructivist critique of merit."²¹ Why? Because if Jews (and other "model minorities" that have "surpassed the dominant majority") have not gotten where they are by having the most "merit," they must have gotten where they are "unjustly."²² If true merit does not explain Jewish success, "only a few conceivable explanations" of Jewish success remain. All of these explanations, they argue, have anti-Semitic origins and overtones. Farber and Sherry do not claim that these negative explanations for Jewish success are factually inaccurate. Their method is to reject critical legal positions not because they are *false*, but because they have pernicious associations or effects.²³ To fail to repudiate these contraband theories once their dangerous associations are revealed is, to Farber and Sherry, to associate oneself with the basic tenets of anti-Semitism and therefore with "the worst totalitarian regime of this century."²⁴

What *does* explain the Jews' disproportionate possession of merit in Farber

¹⁸ *Id.* at 855.

¹⁹ I question the line Farber and Sherry draw between group concepts and morality or truth concepts. After all, the term "the Jew" has historically been as much a moral concept as a social-group designator. See, e.g., SANDER L. GILMAN, *SMART JEWS: THE CONSTRUCTION OF THE IMAGE OF JEWISH SUPERIOR INTELLIGENCE* (1996) [hereinafter GILMAN, *SMART JEWS*]. If, as Gilman suggests in the context of discussing claims of Jewish intellectual difference, "the Jew" is a socially constructed category, it is hard to see how he could be wrong in finding the hand of social construction in defining what is good and bad about the Jew's intellect. See *id.*

²⁰ Farber & Sherry, *Radical Critique*, *supra* note 6, at 857.

²¹ *Id.*

²² *Id.*

²³ See Roderick M. Hills, Jr., *Truth or Consequences? The Inadequacy of Consequentialist Arguments Against Multicultural Relativism*, 15 CONST. COMMENTARY 185 (1998) (reviewing FARBER & SHERRY, *BEYOND ALL REASON*, *supra* note 7).

²⁴ Farber & Sherry, *Radical Critique*, *supra* note 6, at 879.

and Sherry's view? In their article, they deny endorsing any particular theory. In particular, they protest that they are not "endorsing" the view that Jewish culture contains a set of "values" uniquely appropriate to life in modern Western societies²⁵—essentially an evolutionary-based argument for Jewish cultural superiority.²⁶ "Endorsement" or not, however, they *do* state that the possession of better-adapted values is the only morally acceptable explanation—meaning the only explanation that is not "necessarily anti-Semitic" and that can "conceivably explain the relative success of Jews . . . as compared to African Americans."²⁷ And in their book, they state that the fact that Jewish culture "happen[s] to emphasize many of the values that turn out to be needed in modern society—like education and entrepreneurship"—is "actually the most plausible explanation for Jewish . . . success."²⁸

At the same time as I welcome the bringing of a self-consciously Jewish perspective to the affirmative action debate, I am disturbed by Farber and Sherry's method—which is to exercise Jewish power (by wielding the highly-charged accusation of anti-Semitism and Nazism)²⁹ in the very course of denying that Jewish power exists (or at least that it accounts in any way for Jewish success). I am also disturbed by their message. For in the process of defending the Jews, Farber and Sherry threaten to mask the historicity of Jewish experience by reducing it to a set of "values" that just so happen conveniently to match those of contemporary America.

Farber and Sherry are not alone. Some form or another of belief in the superiority of Jewish culture—a secularization of the trope of Jewish "chosenness"—is probably one of the things that has kept Jewish culture alive for so long.³⁰ It is also central to the self-concept of American Jews,³¹ among whom "an attitude of cultural superiority"—a pride that is often mixed with

²⁵ See *id.* at 877.

²⁶ See *id.* at 877 n.140.

²⁷ *Id.* at 877. It is of course important to note that Farber and Sherry repudiate any reliance on *genetic* theories of Jewish intellectual superiority—theories that I have on occasion heard espoused by well-meaning non-Jewish philo-Semites as representing simple truth.

²⁸ FARBER & SHERRY, *BEYOND ALL REASON*, *supra* note 7, at 59.

²⁹ See J.J. Goldberg, *Scaring the Jews*, THE NEW REPUBLIC, May 17, 1993, at 24. "[T]he term 'antisemitism' has unfortunately come to mean any . . . disagreement with the Jewish community. The very term has become a weapon. Overused, it can breed the resentment it is meant to expose." *Id.*

³⁰ See, e.g., HANNAH ARENDT, *ANTISEMITISM* 74 (1951) (separate publication of Part I of the *ORIGINS OF TOTALITARIANISM* (1951)) (discussing the concept of chosenness); Arnold M. Eisen, *The Rhetoric of Chosenness and the Fabrication of American Jewish Identity*, in *AMERICAN PLURALISM AND THE JEWISH COMMUNITY* (Seymour Martin Lipset ed., 1990) [volume hereinafter cited as *AMERICAN PLURALISM*] (same).

³¹ See Eisen, *supra* note 30, at 53.

ignorance³²—has taken the place of other, stronger markers of Jewish identity.³³ Belief in the contingent superiority of Jewish values (*i.e.*, their superiority for adapting to American society) is easier to defend than a belief in their intrinsic superiority.³⁴ In this country, one of the underpinnings of Jews' belief in the superiority of Jewish culture (or Jewish "values") is the assumption that a coherent and distinct set of Jewish values came to America with the mass Eastern European Jewish emigration of the late nineteenth and early twentieth centuries³⁵ and was transmitted to subsequent American-born generations. I take issue with that assumption and examine both the content of this supposed Jewish set of values and the supposed mechanisms of its transmission. It is difficult, if not impossible, simultaneously to cling to chosenness and to assimilate. That has not stopped Jews from trying to cling to both by arguing that the very set of values that manifests Jewish chosenness also maps perfectly onto the highest and best values of the dominant culture. I shall show that this assimilative gesture both oversimplifies Jewish experience and invites Jewishness to disappear.

Having cast doubt on the question of whether Jewish values account for Jewish success, I turn next to the alternative theories that Farber and Sherry reject as anti-Semitic. Heeding Hannah Arendt's controversial admonition that anti-Semitic arguments have "an intimate relationship with the truth they distort,"³⁶ I examine Farber and Sherry's rejected alternative theories and show that buried within them are important truths about both the causes and the limits of Jewish success. I then turn to a set of important if somewhat more prosaic antecedents to Jewish success in America: the unique socio-economic situation of the Eastern European Jewish emigrants to America and the role it played in positioning them to take advantage of the opportunities brought their way by twentieth-century American history. These, too, must be included in any account of why blacks and Jews have had such different experiences in this

³² See ARENDT, *supra* note 30, at 70 (describing Disraeli's "mixture of pride and ignorance" about the tradition and finding this typical of all newly-assimilated Jews).

³³ See SAMUEL M. HEILMAN, *PORTRAIT OF AMERICAN JEWS: THE LAST HALF OF THE 20TH CENTURY* 22 (1995) (discussing suburban Jews in America in the 1950s).

³⁴ American triumphalism, especially in the decade after the decline of socialism as a perceived alternative ideology to American capitalist democracy, easily converts the claim that Jewish values are superior in their resonance with American values to the universal claim that Jewish values are intrinsically superior. I make no claim that Farber and Sherry are American triumphalists.

³⁵ Some would reach even further back and posit the transmission of values from Judaism's earliest beginnings. For a critique of the presumption of "an uninterrupted, historically pure practice of Jewish life that can be simply and directly traced back to the Biblical origins of the Jews," see GILMAN, *SMART JEWS*, *supra* note 19, at 96.

³⁶ ARENDT, *supra* note 30, at 28.

country.

My approach in this Article is shaped by a self-consciously Jewish perspective. I am speaking here of my people, of the stories I grew up being told about them, and of the conflicts I have experienced making sense of those stories and the gaps within them. My response makes no claim to being *the* Jewish response to Farber and Sherry. To riff off of an old Jewish joke, for every two Jews, there will be at least three Jewish responses to their work. Here is mine.

II. "JEWISH VALUES" AND THEIR TRANSMISSION: THE EXAMPLE OF THE SCHOLARLY DEBATE ON JEWISH INTELLIGENCE

What are Jewish values? Did the Jewish experience in general, or the Jewish experience in Europe (or Eastern Europe) in particular, create in Jews an identifiably Jewish stance or orientation (*e.g.*, rationalism, universalism, liberalism, a quintessentially modern—or indeed a quintessentially postmodern—consciousness)? What is the relationship between traditional values (*e.g.*, aspiration towards high levels of religious education) and modern achievements (*e.g.*, acquisition of high levels of secular education)? How were whatever values we identify as Jewish transmitted across the lived cultural gap of emigration to the United States? There is at present a lively debate in the field of Jewish studies³⁷ on all of these questions. I cannot review it here in its rich entirety. However, I can discuss the literature in sufficient depth to make it clear, as a leading sociologist of American Judaism has argued, that "[a]pproaches that assume the existence of universal Jewish norms," their smooth transmission to the American environment, and their causative role in American Jewish success, "reduce an empirical problem to a theoretical assertion."³⁸

Farber and Sherry do not treat the issue of Jewish values systematically and they are understandably vague about what Jewish values are. By mentioning education and entrepreneurship, however, they touch upon two of the most important arenas in which claims of Jewish difference are made. Because this Article was written for a symposium on higher education, and the definition of merit in higher education is so central to Farber and Sherry's argument, I shall focus here on the issue of Jewish educational values.³⁹ What does it mean to

³⁷ I am using this term broadly to include not only scholars in Jewish studies departments, but also scholars in the traditional disciplines (*e.g.*, history, economics, sociology) whose subject matter is Jews and Judaism.

³⁸ CALVIN GOLDSCHIEDER & ALAN S. ZUCKERMAN, *THE TRANSFORMATION OF THE JEWS*, at xi (1984).

³⁹ Whether the "Jewish values" stories that stress entrepreneurship are consistent with

explain Jewish success in education by pointing to the fact that education is traditionally valued by Jews?

There exists a weak, a moderate, and a strong form of the claim that Jewish educational values are linked to Jewish success. The weak form of the "Jewish values" claim asserts that because Jews value education more than other people do, Jews spend more time in school and invest more energy in schooling than do non-Jews. Any group could do as well as the Jews if it made the same investment. The moderate form asserts that Jewish values cause Jews to achieve more success in education than do non-Jews who invest the same levels of time and effort in schooling. In this view, Jewish values have made Jews smarter—at least in the school-smarts sense—than non-Jews. The strong form moves from the quantitative (*e.g.*, from higher levels of participation or higher success rates) to the qualitative, claiming that there is something *distinctly Jewish* about the ways in which smart Jews are smart and that this distinctly Jewish intellectual style has its source in Jewish values. No "slippery slope" connects the weak form of the Jewish values claim to the moderate and strong one. One can credibly argue that the Jewish generations preserved a commitment to education without also arguing that this commitment makes Jews any smarter. One can also argue that Jews, as a group, are smarter than other groups without also believing that there is any specifically Jewish content to Jewish intelligence.

I do not know which form of the Jewish values claim Farber and Sherry mean to endorse. But in my experience, and from my reading, the moderate and strong forms are alive and well in the hearts, minds, and (on rarer occasions in public) lips of a (perhaps surprising) number of Jews and non-Jews inside and outside of academia. Irving Howe speaks for them, I suspect, when he refers in his autobiography to "quickness, skepticism, [and] questioning" as "aspects of intellectuality that [are] the marks of Jewishness."⁴⁰ As Sander Gilman, the leading scholar on the myth of the "smart Jew," has noted, the fact "that Jewish scientists and others accept this image as an aspect of the construction of their own identity does not make the image any more valid."⁴¹ Philo-Semitic myths are nonetheless myths. For this reason, I shall focus my

those that stress education is a question that is not often asked; sometimes the answer is assumed with the simple assertion that Jewish values provide "the traits that businessmen and intellectuals require." Seymour Martin Lipset, *A Unique People in an Exceptional Country*, in *AMERICAN PLURALISM*, *supra* note 30, at 15. Entrepreneurship issues are no less culturally charged than are issues of Jewish intelligence—and, in the contemporary environment, maybe more so. *See, e.g.*, GILMAN, *SMART JEWS*, *supra* note 19, at 235 (citing Naomi Seidman's view that "the hidden, unspoken question that middle-class American Jews cannot raise in the Academy is about the power of the economic stereotype").

⁴⁰ HOWE, *supra* note 2, at 252.

⁴¹ GILMAN, *SMART JEWS*, *supra* note 19, at 28.

comments here on the moderate and strong claims of Jewish intellectual difference—which I will treat together, separating them as necessary—and shall have something to say about the weak claim at the close of the section.

What is posited to be the source of superior (or superior and distinct) Jewish intellectuality by those who believe in it? *The Jewish Mystique*,⁴² a book that I remember being on my family's bookshelf when I was a teenager, makes the argument that Jewish superior intelligence has a basis in natural selection. Scholars, the author argues, were desirable husbands for wealthy girls, making them uniquely successful breeders.⁴³ (Think of this as the "Jewish scholar as thoroughbred racehorse" thesis.) Far more common is the notion that the uniquely Jewish intellect is the product of cultural transmission of the experience of the intellectual rigors and creativity of the traditional study of Talmud and other Jewish texts.⁴⁴ (Think of this as the "Jewish scholar as *yeshivah bokher*" thesis.)⁴⁵ Another explanation is that something about the Jews' historical situation—their status as outsiders, their critical distance towards and acute need to master the dominant culture—led to a uniquely Jewish and highly valuable set of intellectual skills.⁴⁶ (Think of this as the "Jewish scholar as ethnographer" thesis.)⁴⁷ The "thoroughbred racehorse" thesis is used to explain the intellectual level of the Jewish people as a whole (or of large geographical subsets of the Jewish people); the "*yeshivah bokher*" and "ethnographer" theses can be used in this way as well and can also be used to

⁴² ERNEST VAN DEN HAAG, *THE JEWISH MYSTIQUE* (1969).

⁴³ See *id.* at 14–18. Van den Haag's ideas were picked up by Raphael Patai. See RAPHAEL PATAI, *THE JEWISH MIND* (1977). Both van den Haag and Patai are critiqued in GILMAN, *SMART JEWS*, *supra* note 19, at 85–86.

⁴⁴ See, e.g., IVAN KALMAR, *THE TROTSKYS, FREUDS AND WOODY ALLENS: PORTRAIT OF A CULTURE* 59 (1993); Yakov M. Rabkin, *The Interaction of Scientific and Jewish Cultures: An Historical Overview*, in *THE INTERACTION OF SCIENTIFIC AND JEWISH CULTURES IN MODERN TIMES* 9, 25–26 (Yakov Rabkin & Ira Robinson eds., 1995).

⁴⁵ The *yeshivah bokher* was, and is, the young man who prolonged his Jewish learning beyond the elementary school level to an advanced level dedicated to Talmud study and textual exegesis.

⁴⁶ Gilman notes this as a form of the "Jewish educational values" thesis that liberal Jewish intellectuals like because it provides that any group would be as smart as the Jews if it had been confronted with the same sociopolitical situation. See GILMAN, *SMART JEWS*, *supra* note 19, at 24.

⁴⁷ Cf. BAUMAN, *supra* note 1, at 109 (depicting German Jews, while still in Europe, as "ethnographers, cultural interpreters, and mediators" between the Ostjuden and the Gentiles); JOHN MURRAY CUDDIHY, *THE ORDEAL OF CIVILITY: FREUD, MARX, LEVI-STRAUSS, AND THE JEWISH STRUGGLE WITH MODERNITY* 68 (1974) ("[W]hen ghetto walls crumble and the *shetlach* begin to dissolve, Jewry—like some wide-eyed anthropologist—enters upon a strange world, to explore a strange people observing a strange halakah . . .").

explain the Jewishness of particular Jewish intellectuals based on their own specific experiences with Jewish learning and Jewish social experience. I shall focus on the general⁴⁸ and shall look at each of the theories in turn.

What of the idea of the "Jewish scholar as thoroughbred racehorse"? The notion of genetic selection, even if it worked for the Jewish community of Europe (and there is no reason to believe that it did),⁴⁹ could hardly explain the characteristics of the contemporary American Jewish community. There was, in fact, an observed scarcity of rabbis and scholars in the emigrant cohort,⁵⁰ and it would be a stretch to say that the smartest of the non-scholars emigrated and that they were smarter than the scholars who stayed behind. Furthermore, the Jews have not exactly had full control over which Jews survived to breed. There is no reason to think that rabbis and scholars (or educated secular Jews) survived pogroms or the Holocaust at any greater rate than their less learned brethren.⁵¹

⁴⁸ There is a rich literature on the level of the specific, debating the Jewishness *vel non* of the intellectual agendas and/or methods of Jewish secularist intellectuals. For a recent and excellent example, see IVAN STRENSKI, *DURKHEIM AND THE JEWS OF FRANCE* (1997). Strenski contends that "on the whole, a 'Jewish' core of Durkheimian thought has not been found because it is not there. It is not there because Durkheim's Jewish identity was not there until very late in his life—and then only after its formative patterns had already been in place for decades." *Id.* at 7. Strenski argues forcefully against the "essentialist" position in which Jewish patterns of thought are said to be transmitted intergenerationally from ancient (or at least Talmudic) times. Nonetheless, he acknowledges that at some point in the life of Jewish intellectuals they may be in part transformed by their personal encounters with the implications of living in "the world of real Jews." *Id.* at 7–8.

⁴⁹ The claim is made in VAN DEN HAAG, *supra* note 42, at 14, 17–18, but with no support. Among other problems, the author ignores entirely the question of whether the intelligence, as opposed to the "reputed health and wealth," *id.* at 18, of the *bride* had anything to do with the selection of spouses. Much as the traditional culture might have thought otherwise, there is no evidence that intelligence is inherited only from one's male ancestors. Furthermore, he does not explain why there were enough poor but worthy scholars to tip the genetic balance in the community as a whole. For a critique of the genetic inheritance thesis that Patai sets forth, see GILMAN, *SMART JEWS*, *supra* note 19, at 83–84.

⁵⁰ See ARCADIUS KAHAN, *Economic Opportunities and Some Pilgrims' Progress*, in *ESSAYS IN JEWISH SOCIAL AND ECONOMIC HISTORY* 111 (Roger Weiss ed., 1982).

⁵¹ See GILMAN, *SMART JEWS*, *supra* note 19, at 83. Patai simply asserts that "it seems reasonable to assume" that the smartest Jews were most likely to survive the hardships of life as a Jew, without explaining why, for example, "mob violence" was readily escapable by the truly intelligent. See PATAI, *supra* note 43, at 305. It is true, of course, that certain well-known Jewish intellectuals were admitted to the United States as refugees while ordinary Jews were not—making the U.S. government an agent of selection based on intellectual achievement. The handful of intellectuals who made their escape to the United States were of great cultural and scientific significance, but hardly sufficient in number to make a genetic difference to the composition of the American Jewish community.

The thesis of the Jewish scholar as *yeshivah bokher* has more surface appeal, but it has less explanatory power than first meets the eye. Jews (or at least Ashkenazi Jews), we are often told, imbibe an “emphasis on intellect within the home, the family, and the community”⁵² that has its origins in the exalted status of the traditionally learned Jew. But did the esteem in which learning was held translate into greater intellectual acumen? To make that argument, one must confront the gap between the ideal of traditional Jewish education and its reality.

This is an issue to which I am acutely sensitive because of my last name. When I encounter people with a dangerously small amount of Jewish knowledge, they often inform me with a certain tone of respect in their voice that Malamud (or *melamed*, as it is better transliterated) means “teacher” or “scholar” in Hebrew. Yes, a *melamed* was a teacher (always male, of course, as were his pupils, a fact that rather detracted from my ability to see myself as the inheritor of a grand religious intellectual world). But the *melamed* was neither accorded nor deserving of deep respect. The *melamdim* were the elementary-school (*cheder*) teachers in the Jewish traditional system, who drilled the Hebrew alphabet into their pupils and left to more worthy teachers the real education of those few who went on to higher levels of learning.⁵³ The usual result of *cheder* learning, and its major purpose, was to permit Jewish boys to recite prayers in Hebrew by rote.⁵⁴ Because Yiddish is written in Hebrew characters, *cheder* learning was an aid in the development of Yiddish literacy. But it is not the mere possession of literacy that traditional Jewish learning is said to impart. Instead, it is said to develop a critically interpretive turn of mind. It is difficult to see how anything but advanced-level study would

⁵² VAN DEN HAAG, *supra* note 42, at 20; *see also* PATAI, *supra* note 43, at 302–04. Van den Haag makes an exception for the Sephardim who, we are told, “did not pursue separate Jewish ideals”—as manifest in the fact that they “have never focused on educational achievement.” *Id.* at 22. Even assuming the truth of the assertion for the moment (of which I see no evidence with respect to traditional Jewish learning), the author does not explain why, instead, the exception of the Sephardim does not require the conclusion that respect for education is not generically a “Jewish ideal” at all, but rather an ideal that grew out of the particular situation of the Ashkenazi communities. For the kind of serious comparative approach needed to begin to make statements about what generic “Jewish” values really are, *see* COMPARING JEWISH SOCIETIES (Todd Endelmann ed., 1997).

⁵³ *See, e.g.*, NEAL M. COWAN & RUTH SCHWARTZ COWAN, OUR PARENTS’ LIVES: JEWISH ASSIMILATION AND EVERYDAY LIFE 74, 76 (1989); RUTH GAY, UNFINISHED PEOPLE: EASTERN EUROPEAN JEWS ENCOUNTER AMERICA 32 (1996). For a literary portrayal, *see* HENRY ROTH, CALL IT SLEEP 211–35 (Noonday Press ed., 12th printing, 1996). *See also id.* at 367 (where a visiting rabbi is stunned to hear a child read Torah “as though he knew what he read”).

⁵⁴ *See* GAY, *supra* note 53, at 32.

impart such intellectual skills.⁵⁵ And those skills were so deeply imbedded in the traditional context that their transfer to modern secular education would have been experienced more as a sharp break than as a source of continuity.⁵⁶ As Sherry Gorelick puts it in her study of Eastern European Jews in City College, "the transfer to secular learning cannot have been as easy as hanging up a prayer shawl and putting on academic robes."⁵⁷

One must add to the puzzle of the transformation of religious into secular educational values within a single person's lifetime the equally significant puzzle of intergenerational transmission of Jewish educational values. Part of

⁵⁵ See, e.g., SUSANNE KLINGENSTEIN, *JEWS IN THE AMERICAN ACADEMY, 1900-1940: THE DYNAMICS OF INTELLECTUAL ASSIMILATION* 55-59 (1991) (describing the Jewish education of philosopher Moses Cohen). Even if more students had advanced to Talmud study, they might not have been able to abstract from such materials as "the minutiae of the Law of Divorce," *id.* at 59 (quoting Cohen), the highly abstract theological formulations that Klingenstein sees as the source of a distinctly Jewish mode of secular thinking. See *id.* at xiv; see also JONATHAN BOYARIN, *THINKING IN JEWISH* 16 (1996) (attempting to root a "restless unifying modern impulse in the natural and social sciences" in the Jewish notion of creation as God's speech or writing—hardly a "pathway from Torah" that many Jews would have been able to find). Furthermore, it is difficult to see the affinity between Talmud study and science postulated, for example, in Rabkin, *supra* note 44, at 25-26. The intellectual cast that Talmudic study is said to impart is one akin to scientific method in which the canon is open to new interpretations and the cleverest new interpretations find their way into an ever-expanding canon. That may have been the case in the period of the Talmud's development—although someone, or some group, in the end decided whose arguments were good enough or important enough to be included in the written version of the oral tradition. But the Talmud (or, I should say, both Talmuds—Babylonian and Jerusalem) had reached closure over a millenium before our Eastern European grandfathers studied it, and it was by no means the case that the newest interpretations of it had the greatest intellectual currency. In my brief period of traditional Jewish textual study (both at the Hebrew University and in a *yeshiva* for women), I recall being taught that religious authority has declined over the centuries.

⁵⁶ See, e.g., SHERRY GORELICK, *CITY COLLEGE AND THE JEWISH POOR: EDUCATION IN NEW YORK, 1880-1924*, at 133 (1981).

⁵⁷ *Id.* at 6. Professor Hanoch Dagan, a professor at the University of Tel Aviv Law School with whom I have had the pleasure of working this year, suggests from his experience of working with modern-day *yeshiva bokhers* in Israel that they do, indeed, bring uniquely sharp analytical skills to bear on their legal studies. Transitioning from the *yeshiva* to the practical world of lawyering (particularly commercial lawyering) is not problematic for them, in his view. This does not, however, entirely contradict Gorelick's historically-based observations. *Yeshiva* students in Israel do receive education in secular fields as well, so one would expect the transition to be less dramatic than would have been the case in a less modern setting than contemporary Israel. And, in any event, Dagan characterizes the intellectual approach of his gifted *yeshiva*-trained students as "geometric, less attuned to social meanings," as Langdellian rather than Legal Realist. The traits he describes as marking his *yeshiva*-trained students do not correspond to the penchant for social criticism so often identified as "Jewish" in the American and European settings.

the myth of the Eastern European emigration to America is that the Jews left a Jewish culture in full flower, packed that culture into their suitcases, emigrated as intact families, and retained the best of their culture while commencing the multigenerational process of assimilation. But the actual process of emigration was a far more disruptive one—one that makes it hard to imagine how the transmission of a “supposed integrated value system” might ever have taken place.⁵⁸

There was considerable internal migration of Jews within Eastern Europe prior to their eventual migration to America, most of it to cities in which Jews encountered the influence of the trade-unionist, socialist, and Zionist ideologies that so many urban Jews brought with them to the United States.⁵⁹ These movements and the secular Yiddish culture in which they thrived had far greater influence on the orientation of many of the Eastern European emigrants than did traditional Jewish religious thought.⁶⁰ Even for those Jews who had not already encountered non-traditional modes of thought in Eastern Europe, there is little reason to assume that they arrived in full possession of the traditional Jewish culture we nostalgically associate with the *shtetl*. Many emigrants came to the United States as what Ruth Gay has evocatively called “unfinished people”—people who, either because they emigrated as independent children or because their families had fractured under the pressure of European economic conditions, were “wedded to the culture” of Eastern European Jewry but were “not really adept in it. And once in America, it was too late to learn anymore.”⁶¹

⁵⁸ See *id.* at 15.

⁵⁹ See EZRA MENDLESON, *CLASS STRUGGLE IN THE PALE* (1970) (discussing leftist activity); GERALD SORIN, *A TIME FOR BUILDING: THE THIRD MIGRATION, 1880–1920*, at 22–25 (1992) (discussing internal migration and urbanization). For a discussion of the uneven dispersal of leftist ideologies throughout the Pale of Settlement, see GAY, *supra* note 53, at 35. See also SORIN, *supra*, at page following 124 (map showing areas of Bund activity).

⁶⁰ See SORIN, *supra* note 59, at 97–99. Sorin observes that “the religious life of observant Jews did not show many signs of vitality on the Lower East Side” during the early waves of Jewish immigration (before 1910), *id.* at 97, and that in the “new transitional culture” of the East Side, *id.* at 99, it was secular Yiddish institutions that held sway—theaters, newspapers, and cafes. The adult learning that was most popular on the East Side was modern and political rather than traditional, see *id.* at 105, and much of it was sponsored by left organizations. For Jews in Germany and Austria, where processes of assimilation had been taking place for far longer, the breach with the traditional culture was even greater. Gershom Scholem complained that his father’s roots in Judaism were shallow; Franz Kafka (raised as a German-speaking Jew in Prague) complained that he was offered “no ‘Jewish material’” from which to mold his identity. See BAUMAN, *supra* note 1, at 119.

⁶¹ GAY, *supra* note 53, at 4–5. Gay’s account resonates powerfully with parts of my own family’s emigration story.

Many emigrants thus arrived in America with already attenuated ties to the Jewish "Great Tradition"⁶² of Talmudic disputation. One sees the claim made in the philo-Semitic literature that the aspects of the Jewish textual tradition that are compatible with science and other advanced secular pursuits were capable of being transmitted between generations "even [in] their vestiges,"⁶³ but it is difficult to see how. Many Jews of the second generation (almost all of the women and many of the men) had no formal Jewish religious training at all, or none beyond the rote-learning *cheder* stage. The immigrant families observed a "nominal Orthodoxy," but any notion that "the traditional Jewish religious spirit was being rekindled in America" was "an illusion."⁶⁴ The intellectual authority of the immigrant fathers was diminished by the intergenerational role reversal that inevitably results when immigrant children surpass their fathers' knowledge of English and of American cultural norms.⁶⁵ Fathers were, in any event, often secondary: many children absorbed Judaism not through their fathers but through their mothers,⁶⁶ in the form of the "Little Tradition" of Yiddish folkways and Eastern European Jewish cuisine.⁶⁷ As Jenna Weissman Joselit puts it, the Jewish God in America became a household god⁶⁸—a god

⁶² I borrow the terms "Little Tradition" and "Great Tradition" from Gay: "They were the recipients, but not yet old enough to be the carriers of their culture, bringing with them only the 'Little Tradition'—the traditions of home, of daily life, the general mores and morals of their community. The 'Great Tradition'—the tradition of higher learning, of religious exegesis—remained behind." GAY, *supra* note 53, at 286. For an earlier usage of the contrast between "great" and "little" traditions, see, for example, MILTON SINGER, *WHEN A GREAT TRADITION MODERNIZES: AN ANTHROPOLOGICAL APPROACH TO INDIAN CIVILIZATION* 4–9 (1972) (discussing the work of Robert Redfield).

⁶³ Rabkin, *supra* note 44, at 27.

⁶⁴ SORIN, *supra* note 59, at 175.

⁶⁵ See GAY, *supra* note 53, at 7, 10–11.

⁶⁶ Thus, I question the location of Jewish intellectuality in the transmission of the core tradition of the second generation's *fathers'* world. But see KLINGENSTEIN, *supra* note 55, at xiii–xiv.

⁶⁷ See Oscar Handlin, *Being Jewish: The Endless Quest*, 66 THE AM. SCHOLAR 361, 372 (1997) ("Fragrances in my mother's kitchen evoked formulaic phrases associated with holy days and temporarily effaced questions of meaning. But with the passage of time the pungency of familiar fragrances faded . . ."). For another perspective on the genderedness of the divide between the textual and the domestic traditions, see NAOMI SEIDMAN, *A MARRIAGE MADE IN HEAVEN: THE SEXUAL POLITICS OF HEBREW AND YIDDISH* (1997); Naomi Seidman, *Lawless Attachments, One-Night Stands: The Sexual Politics of the Hebrew-Yiddish Language War*, in *JEWS AND OTHER DIFFERENCES: THE NEW JEWISH CULTURAL STUDIES* 279, 280–81 (Jonathan Boyarin and David Boyarin eds., 1997) [volume hereinafter cited as *JEWS AND OTHER DIFFERENCES*]. For the "Little Tradition," see *supra* note 62.

⁶⁸ See JENNA WEISSMAN JOSEKIT, *THE WONDERS OF AMERICA: REINVENTING JEWISH CULTURE, 1880–1950*, at 6 (1994).

one communed with at the dinner table rather than at the study table. The “bar mitzvah factories” in which boys learned the bare minimum needed to get through the ceremony⁶⁹ could hardly compete.

The problematic nature of the intergenerational transmission of Jewish values does not mean that Jewishness played no role in the academic and professional success of Jews. Some families did better than others in communicating the tradition in all its complexity, and those with whom they came into contact may well have imbibed some aspects of the Great Tradition through those associations. Other, more subtle, cultural processes may also have been at work. The myth of Jewish intellectual superiority may have been an efficacious one. Jewish parents and Jewish teachers may have communicated their high expectations based on what they thought to be continuities with a Jewish scholarly past, and their children and students may thus have been taught to associate their intelligence and success (such as it was) with their Jewishness. (Their stupidity and failure (such as it was) was likely attributed to other causes.) My point, thus, is not that migration from Eastern Europe was a cultural dead end. That would be an exaggeration. My point, rather, is that one cannot simply treat cultural continuity as a natural fact. One must see how problematic and contingent it was and question the extent to which the intergenerational project succeeded. Only then can its success be used to explain the success of the Jews in America.⁷⁰

What of the thesis of the Jew as ethnographer? Might a heightened (or a distinct) intellectuality be the byproduct of a distinctly Jewish existential stance? To the extent I have experienced my own Jewishness as driving my intellectual pursuits (including the study of comparative religion and anthropology), it has been on these terms. Nonetheless, that way of understanding myself falls apart on closer inquiry. My intellectual temperament, I am told, has been fairly constant since childhood. My childhood was spent in an essentially all-Jewish environment—or, more accurately, a Jewish and Italian neighborhood in which

⁶⁹ See *id.* at 92 (“[F]rom a pedagogical perspective . . . these schools failed miserably in furthering cultural literacy or fostering a deep and abiding appreciation for *yidishkayt*.”); see also *id.* at 120 (noting that as early as 1933, it was observed that “[n]o sooner did the bar mitzvah boy’s parents pay the bill . . . than the bar mitzvah boy dropped from sight, rarely setting foot in a synagogue again, let alone continuing his Jewish education”).

⁷⁰ I do not mean to suggest, by my emphasis on the difficulties inherent in the transformation of traditional religious-based values into a set of secular but distinctly Jewish American values, that the transmission of the religious tradition was seamless for those Jews who adhered to high levels of religious observance in the United States. Here the saying of a former teacher of mine, anthropologist Marshall Sahlins, comes to mind. He reverses the traditional French saying to yield “*Plus c’est la même chose, plus ça change*”—a reminder that when things appear to have remained the same over a divide of time and space, one should look for change.

the Jews and Italians never interacted and neither group was more the "outsider" than the other. I did not encounter non-ethnic America until I went to a private college in Connecticut. Even if outsider status could somehow be communicated from parent to child, my parents grew up either in mostly Jewish neighborhoods or in neighborhoods, like mine, where rival ethnicities competed for turf and the white Protestant American majority was nowhere to be seen. Certainly my substantive interest in the constitutive role of race and ethnicity grew out of these experiences. But an interest in minority cultures (and ultimately in culture in general) is not the same as an intellectual temperament built upon the need to navigate the boundaries between an outsider minority culture and a dominant culture.⁷¹

Among those who advocate the view that there is such a thing as a Jewish stance, one based on the core elements of the Jewish situation in the world, there is little agreement on the nature of the stance.⁷² Some argue that Jews are hard-wired to be capitalists of some sort—although there is considerable disagreement as to whether Jewish-style capitalism bears any relationship to full-blown modern capitalism.⁷³ A different but related claim is that Jewish values are by nature "middle-class values," a claim historically made by proponents of Jewish immigration as a way of distinguishing the Jews from other immigrants thought by the speaker to be less desirable.⁷⁴ For those who

⁷¹ Indeed, even if I go back two generations to the one of my grandparents whose story most centrally involves finding his way into and out of a foreign Russian cultural environment (my paternal grandfather, who served in the Russian Army), I find nothing that could have been transmitted to me in childhood by way of a Jewish outsider stance. My grandfather was silent about his life experiences and his feelings about Judaism.

⁷² For a similar observation about American literature up to the 1940s, see Daniel Itzkowitz, *Secret Temples*, in *JEWS AND OTHER DIFFERENCES*, *supra* note 67, at 176, 180 (finding the works "most striking, taken as a whole, for their inability to arrive at a solid notion of the 'Jew'").

⁷³ For discussion of the nature of Jewish capitalism, see ARENDT, *supra* note 30, at 11–28; J.J. GOLDBERG, *JEWISH POWER* 75–76 (1996) [hereinafter GOLDBERG, *JEWISH POWER*]; HILLEL LEVINE, *ECONOMIC ORIGINS OF ANTISEMITISM: POLAND AND ITS JEWS IN THE EARLY MODERN PERIOD* 18 (1991); LOUISE A. MAYO, *THE AMBIVALENT IMAGE: NINETEENTH-CENTURY AMERICA'S PERCEPTION OF THE JEW* 181 (1988); Amy Newman, *The Idea of Judaism in Feminism and Afrocentrism*, in *INSIDER/OUTSIDER* *supra* note 13, at 150, 165; Anthony Reid, *Entrepreneurial Minorities, Nationalism, and the State*, in *ESSENTIAL OUTSIDERS*, *supra* note 3, at 33, 34–37.

⁷⁴ On the treatment of Jewish values as middle-class values well in advance of Jews' penetration of the American middle class as an economic matter, see, for example, MAYO, *supra* note 73, at 163–64. In contrast, see CUDDIHY, *supra* note 47, at 157, 232, arguing that it is the attack on bourgeois values rather than their instantiation that marks "authentic" Jewishness. Gorelick's book on City College is, through and through, a critique of the "middle-class values" theory. See GORELICK, *supra* note 56.

think of Jews as intrinsically middle-class or capitalist, the heavy involvement of Jews in the European and American left becomes an aberration that needs to be explained away.⁷⁵ For others, it is the leftist (or at least liberal) activities of the Jews that are most constitutive of the Jewish stance, one shaped by their strong ethos of community, mutual assistance, and the ethical principle of *tikkun olam*.⁷⁶ For the Jews-as-natural-leftists contingent, it is Jewish entrepreneurialism and economic exploitation of other Jews (*e.g.*, the Jewish-owned sweatshops of the garment district) that must be explained away.

Moving from the economic back into the intellectual realm, the same debates rage. Are the Jews quintessential "moderns," drawn to individualism, rationalism, and universalism by their recognition that these were the only available ideologies within the dominant societies that would support their full acceptance as humans?⁷⁷ (One can easily read Farber and Sherry's defense of meritocracy as an affirmation of the view of Jews as "modern" in this sense.) Or are the Jews quintessential "post-moderns," absorbing from the historical experience of the Jews the knowledge of how to survive in a world of fractured

⁷⁵ See MAYO, *supra* note 73, at 171–73.

⁷⁶ The phrase means "healing the world." For a view of the Jews centered on left activism, see GORELICK, *supra* note 56, at *passim*; for discussions of the Jews and liberalism (in the American activist-government and pro-civil-rights sense), see Henry L. Feingold, *From Equality to Liberty: The Changing Political Culture of American Jews*, in *THE AMERICANIZATION OF THE JEWS* 97, 102, 110 (Robert M. Seltzer & Norman J. Cohen eds., 1995) [hereinafter *AMERICANIZATION OF THE JEWS*]; James Glaser, *Towards an Explanation of the Radical Liberalism of American Jews*, 50 *POL. RES. Q.* 437, 437–39 (1997); Theodore M. Shaw, *Affirmative Action: African-American and Jewish Perspectives*, in *STRUGGLES IN THE PROMISED LAND*, *supra* note 5, at 323, 323–24. For the view that American Jewish liberalism was contingent rather than constitutive, see Jerold S. Auerbach, *Liberalism, Judaism, and American Jews: A Response*, in *THE AMERICANIZATION OF THE JEWS*, *supra*, at 144–46. The question of Jews and affirmative action—the context in which Farber and Sherry participate in this debate—is dealt with specifically by Shaw, who claims that Jews who oppose affirmative action do so as whites rather than as Jews, and thus have no basis for claiming that the Jewish experience of discrimination in any sense privileges their viewpoint. See Shaw, *supra*, at 327. But see Auerbach, *supra*, at 132 (suggesting that the most appropriate position for Jews on affirmative action is the self-interested one that works to protect current meritocratic principles).

⁷⁷ See EUGENE B. BOROWITZ, *THE MASK JEWS WEAR: THE SELF-DECEPTION OF AMERICAN JEWRY* 220 (1973) (suggesting that Jews adhere to universal ethical principles until they begin to run counter to Jewish group interest); Steven Beller, "Pride and Prejudice" or "Sense and Sensibility"? *How Reasonable Was Anti-Semitism in Vienna, 1880–1939?*, in *ESSENTIAL OUTSIDERS*, *supra* note 3, at 99, 109 (arguing that Jews embraced socialism because it was rationalist and accorded Jews full humanity). For the supposed affinity of Judaism to science, see, for example, Rabkin, *supra* note 44, at 9, 21–22. For the contrary view that individualism, democracy, and other American values are foreign to Judaism, see HEILMAN, *supra* note 33, at 136.

identities and dramatic breaks with the past?⁷⁸ Looking at the inkblot that is Jewish intellectuality and experience, the opposing sides cannot agree on what is figure and what is ground. And thus the Jewish values discussion goes. Each side invents the Jews it needs and ignores those who do not fit the desired mold. There is something in Jewish experience for everyone.⁷⁹

Given the uncertain evidence in support of the moderate and strong theories of Jewish intellectual difference, one must wonder why they are still so compelling. Perhaps it is because Jewish identity is so tenuous in the assimilated conditions of the United States that Jews think it an act of group piety to associate their best attributes with their Jewish heritage.⁸⁰ Perhaps it is because

⁷⁸ On Jews as postmodern, see, for example, BAUMAN, *supra* note 1, at 158; BOYARIN, *supra* note 55, at 197, 200; Susan E. Shapiro, *Ecriture Judaïque: Where Are The Jews in Western Discourse?*, in *DISPLACEMENTS: CULTURAL IDENTITIES IN QUESTION* 183 (Angelika Bammer ed., 1994); cf. BOROWITZ, *supra* note 77, at 31 (discussing the "positive pull of the Marrano role"); YIRMIYAHU YOVEL, *SPINOZA AND OTHER HERITICS: THE MARRANO OF REASON* 30–32 (1989) (using the image and history of the Marrano to account for the practices of dual consciousness among Jews).

One awkwardness of the Jews-as-postmodern thesis as it applies to American Jews is the centrality of the Holocaust to the thesis—because it was only with the collapse of the assimilatory model in Germany that Jews came to embody the failure of modernism. The problem is that American Jews who did not themselves come from survivor families did not seriously confront the Holocaust until the late 1960s, when patterns of Jewish intellectual life in America were already well established. See DAVID BIALE, *POWER AND POWERLESSNESS IN JEWISH HISTORY* 200–01 (1986) ("Only with the Six Day War did American Jews begin to confront the Holocaust . . . [Elie] Wiesel had written some of his most important books before 1967, but he was only 'discovered' as a result of the new interest in the Holocaust sparked by the Six Day War.").

⁷⁹ See, e.g., GERSHOM SCHOLEM, *ON JEWS AND JUDAISM IN CRISIS* 190–91 (1976) [hereinafter SCHOLEM, *JEWS AND JUDAISM IN CRISIS*]. In an essay on Walter Benjamin, Scholem distinguishes between those German-Jewish writers who "unquestioningly look upon themselves as forming part of German culture and tradition, as belonging to the German people," and those "very few among the first-rate minds of German-speaking Jewry [who] did not succumb to that illusion," including Freud, Kafka, and Benjamin. *Id.* The latter group, those who "did not fool themselves," never used the phrase "we Germans" or "succumbed to the illusion of being at home." *Id.* See also CUDDIHY, *supra* note 47, for whom it is only writers of the sort Scholem identifies as "the very few" who are authentically Jewish. See also Isaac Deutscher, *The Non-Jewish Jew*, in DEUTSCHER, *THE NON-JEWISH JEW AND OTHER ESSAYS* 25, 41 (1968) (advocating the "moral and political heritage that the genius of the Jews who have gone beyond Jewry has left us—the message of universal human emancipation"). Here Deutscher means Spinoza, Heine, Marx, Freud—more or less the same group that Cuddihy explores in a more particularistic vein.

⁸⁰ Not all Jewish writers, of course, are willing to engage in such pieties. See, e.g., ANNE ROIPHE, *GENERATION WITHOUT MEMORY: A JEWISH JOURNEY IN CHRISTIAN AMERICA* 81–82 (1981) ("This very respect I have for languages, learning, scholarship, did not come from my Jewish parents, for whom financial gain was wisdom itself. It came from my

the form in which defenders of Jewish intellectual superiority characterize it seems so safe. As we shall see, assimilating Jews rarely claim as their Jewish heritage attributes or values they do not also believe to be highly valued in the dominant society. What could be wrong with a people choosing to adopt the role of secular priesthood, which is of living instantiation of the nation's highest intellectual values?

But those who assert Jewish intellectual difference are not in complete control of the way in which that difference will be evaluated in the society at large. As a historical matter, philo-Semitic myths have the nasty tendency not to stay "philo" for long. The historical tendency has been for praise to become blame, for the identification of a particular trait as Jewish to take on a negative cast.⁸¹

Take as a case study the frequent argument of the Jews of Western Europe that Judaism is rationalistic and universalistic and thus shares in the highest values of the dominant culture.⁸² This was the main thrust of the German Jewish tradition of the secular historical study of Jewish sources, the *Wissenschaft des Judentums*.⁸³ In Germany and Austria, Jews were conspicuously outperforming Gentiles in any number of fields of endeavor that were coming to be widely valued, ranging from banking to the learned professions.⁸⁴ If Judaism's values were no different from those of the surrounding culture, what explained superior Jewish performance in these fields? One answer was that Jewish rationality and universalism were in some sense *superior* to that of the surrounding culture—and that was likely the story the Jews told themselves. But the other answer, which was more prevalent and far more dangerous, was that the Jews had a *hyper-rationality* (e.g., corrosively critical, brooding, unmanly, crafty rather than truly intellectual) and a *hyper-universalism* (e.g., built upon international contacts, unduly cosmopolitan, not truly German) that might *pass for* instantiations of the true values of the country but were instead dangerous distortions and serious threats to the dominant

Christian school, my secular college.").

⁸¹ See, e.g., Newman, *supra* note 73, at 150, 176 ("[S]pecifically which beliefs and values are identified as 'Jewish' . . . vary from decade to decade, from theorist to theorist, and from cultural location to cultural location, following trends in social criticism. What remains constant, however, is the systematic use of a negative concept of Judaism to legitimate criticism of *whatever* ideas and practices are viewed as most corrupt and oppressive.").

⁸² For the American-Jewish variant on this argument, see *infra* text accompanying notes 236–37.

⁸³ See DAVID BIALE, GERSHOM SCHOLEM: KABBALAH AND COUNTERHISTORY 13–33 (1979) [hereinafter BIALE, GERSHOM SCHOLEM].

⁸⁴ See, e.g., Beller, *supra* note 77.

culture.

The problem for the Jews was not merely the fact that they were conspicuously successful in those realms of national economic life in which they were permitted to participate. The problem was that by staking their claim to full citizenship on the rationality and universalism of Judaism, the Jews were ignoring those aspects of the dominant national character that were irrationalist and particularist. As Steven Beller explains in his study of anti-Semitism in Vienna in the late nineteenth and early twentieth centuries, the modernizing Jews of Vienna did not assimilate into Viennese culture as it actually was. Instead, they assimilated to "basically a Jewish interpretation of the *German* Enlightenment's version of German culture."⁸⁵ When the "old Catholic Baroque city reasserted itself," the Jews "remained wedded to their essentially German liberal identity, disdaining what to them seemed the inferior culture of the Viennese populace."⁸⁶ The Jews saw themselves as "superior" because the plane on which Jewish and German values intersected—"the culture of Goethe, Schiller, and Lessing"—was superior in their view to "the quasi-pagan world of Baroque hedonism and idolatry."⁸⁷ Their stance was "a form of pride, and hence a source of friction," and bore out "anti-Semitic claims about the Jewish intellectuals' corrosive attacks on Christian-Aryan Austrian society and values."⁸⁸ In short, the Jews failed to see that no culture is made up exclusively of its most rational and most universal tendencies.

In order to maintain the association of Judaism with the best of German rationalist and universalist culture, the Jews needed not only to take a reductionist stance towards German culture, but they also needed to reduce Judaism to its rationalist and universalist elements. There certainly exists within Judaism a rationalist tradition—a tradition of expert textual study aimed at making sense of (and enlarging upon) a canon—which has produced works of great literary, ethical, and philosophical sophistication. There is also a thread of universalism within Judaism, borne chiefly by the prophetic tradition and its rejection of particularistic cultic performance in favor of the performance of universal ethical duties. But irrationalism and particularism also have places

⁸⁵ *Id.* at 99, 105; see also BAUMAN, *supra* note 1, at 126 (arguing that the Jews in Germany created a universalistic definition of the German spirit which then became "the icon they worshipped").

⁸⁶ Beller, *supra* note 77, at 99, 105.

⁸⁷ *Id.* For the Jews' love of Schiller, long past the point at which his "language had already begun to sound hollow" to Germans, see SCHOLEM, *JEW AND JUDAISM IN CRISIS*, *supra* note 79, at 79. To Scholem, Schiller was seen as "spokesman for pure humanity, lofty poet of the highest ideals of mankind," and "represented everything they thought of, or wished to think of, as being German." *Id.*

⁸⁸ Beller, *supra* note 77, at 99, 106.

within Judaism. This is the thrust of the pioneering work of Gershom Scholem, who almost single-handedly elevated the centuries-long Jewish mystical and messianic traditions to the status of objects of serious study.⁸⁹ Scholem, whose work was self-consciously aimed at unmasking the assimilatory motive underlying *Wissenschaft des Judentums*, focused on the Kabbalah, for which previous apologists for Judaism had "little sympathy—to put it mildly."⁹⁰

At once strange and repellent, it epitomised everything that was opposed to their own ideas and to the outlook which they hoped to make predominant in modern Judaism. Darkly it stood in their path, the ally of forces and tendencies in whose rejection pride was taken by a Jewry which . . . regarded it as its chief task to make a decent exit from the world.⁹¹

To the German Jews, the fear of the *Ostjuden*—the Jews from Eastern Europe—was in considerable part a fear that their ritually-embodied living out of the Jewish mystical tradition would undermine the German Jews' scholarly (and political) efforts to cleanse historic Judaism of its lived particularism and dissolve its belief system into that of modern German rationality.

The cultural dynamic that arises out of the battle to represent Judaism as standing for whatever the Jews find truest and best in the dominant culture can best be described as an instance of what Gregory Bateson called *schismogenesis*. Bateson defines the term as "a process of differentiation in the norms of individual behaviour resulting from cumulative interaction between individuals,"⁹² but it is useful in relation to group interactions as well. As Jean-Paul Sartre so clearly recognized in *Anti-Semite and Jew*,⁹³ if the Jew claims to be rational, the anti-Semite has two choices: deny that the Jew is truly rational or devalue rationality.⁹⁴ It is a game of move and countermove. Thus Sartre shows that once the Jews stake their claim to full French citizenship on the rationalist and universalist inheritance of the French Revolution, the "real" French redefine the meaning of being French so that "Frenchness" turns on organic connection to land and native command of language. The irrational, the particular, the organic become what is truly of value precisely because it is

⁸⁹ For a description of Scholem's contributions, see BIALE, GERSHOM SCHOLEM, *supra* note 83, at 113–70.

⁹⁰ GERSHOM G. SCHOLEM, *MAJOR TRENDS IN JEWISH MYSTICISM* 1 (3d rev. ed. 1960).

⁹¹ *Id.* at 1–2.

⁹² GREGORY BATESON, *NAVEN* 175 (1936).

⁹³ JEAN-PAUL SARTRE, *ANTI-SEMITES AND JEWS* (George J. Becker trans., 1st paperback ed. 1965).

⁹⁴ See *id.* at 22–25, 79–83.

what the Jew—defined as outsider—cannot have.⁹⁵ And the Jew, transformed by the frustrations of being stopped short of the goal of assimilation, comes to “possess all the negative qualities ascribed to the image of the Jew.”⁹⁶ The “cumulative interaction” between Jews and the dominant majority leads to increased differentiation rather than to harmony. We shall have occasion to explore later whether similar dynamics are taking place within American society.⁹⁷ Even standing on its own, however, the historical example stands as a warning against seeing in ourselves only what we think the dominant society, as we define it, would want to see.

And herein lies the attractiveness of the weak claim of Jewish intellectual difference—the claim that Jews value education more than other groups do, but are neither better nor different than other groups in their intellectual style as students or in the rates at which they succeed in and through education. The weak claim commends itself by its minimalism, both in what it asks of the Jewish tradition and in what it asks of the dominant society. Jews need not base this claim upon ancient traditions of Hebrew learning. An emphasis on education can be said to have risen from the particular circumstances of the Eastern European immigrant generation. These include the future immigrants’ encounter with socialist-driven secular worker education in Europe; their exposure to the educational component of the flowering of Yiddish language and literature; and once they arrived in America, their contact with the assimilatory machinery the German Jews created to aid in their Americanization.⁹⁸ It is a small step to say then that the immigrant parents, who

⁹⁵ See *id.* For the same dynamic with reference to Germany, see BAUMAN, *supra* note 1, at 121.

⁹⁶ SANDER L. GILMAN, *JEWISH SELF-HATRED: ANTI-SEMITISM AND THE HIDDEN LANGUAGE OF THE JEWS* 11 (1986) [hereinafter GILMAN, *JEWISH SELF-HATRED*] (essentially following Sartre’s argument here); see also ARENDT, *supra* note 30, at 66 (“The behavior patterns of assimilated Jews, determined by this continuous concentrated effort to distinguish themselves, created a Jewish type that is recognizable everywhere . . .”); BAUMAN, *supra* note 1, at 114 (Bauman writes, regarding Heinrich Heine, that “[t]he louder he protested his emancipation from Jewishness, the more his Jewishness seemed to be evident and protruding.” His very “assimilatory passion was perceived as the most convincing proof of his Jewish identity.”). Or, as my colleague Don Herzog puts it, “So contempt works: it turns its victims into what it claims they already are.” DON HERZOG, *POISONING THE MINDS OF THE LOWER ORDERS* 359–60 (1998).

⁹⁷ See *supra* text accompanying notes 223–225.

⁹⁸ It is enough to say that the thriving secular Yiddish culture of the Lower East Side was part of and launched “[a] virtual craze among Jewish adults for secular education” as “part of a general release of energy that for generations in the Old World had to be suppressed.” SORIN, *supra* note 59, at 106. Sherry Gorelick argues that the German Jewish emigrants of the previous generations did not have the love of learning as one of their central values and that the “cultural passion” that was fueling the intellectual life of the Lower East

participated in one or more milieus in which adult education was stressed, passed their love of learning to their children—or at the very least imposed strong parental discipline where learning was concerned.

Furthermore, one can tell the weak version of the “education values” story without any recourse to the concept of a Jewish “love of learning” at all. Perhaps the Jews simply evaluated their economic situation and saw that the best economic opportunities were available for those with substantial investments in education. Other groups might have also seen the value of courting jobs, for example, in the expanding civil service sector. But other groups might not have felt, as the Jews did (and as blacks did generations later), that the civil service was the safest place to work in a country in which they were not yet fully accepted.

The weak claim of the effect of “Jewish values” on Jewish success seems safe. Certainly this is a claim that could offend no one and that could not possibly trigger any schismogenetic process of approach, avoidance, or mutual hostile differentiation. But here the response must be mixed. This weak claim might work—but for good historical reasons, Jews are not likely to settle for it.

Critics of the Jews in America have long conceded that the Jews were unusually hungry for education. But what is the meaning of “education”? Critics were quick to argue that the book learning Jews were so anxious to consume was not “education” in its fullest sense. True education, it was argued by the leaders of Yale and other elite institutions in the 1920s, aimed to socialize students into “all attributes of refinement and honor”:⁹⁹ cultured speech and manners, confident masculinity, strength of character, practical judgment, and wisdom. Their view of the Jews was that Jews neither sought, nor were capable of, achieving true education.¹⁰⁰ What Jews could do—and could do extremely well—was excel in the classroom. In the language of the day, the Jew was the “greasy grind” who got great grades, but whose body, voice, accent, and sense of tact and sociability were “still in the stage of the push-cart peddler.”¹⁰¹ The very fact that Jews did so well in the classroom caused the more genuinely “educable” Protestants to eschew success in the classroom altogether.¹⁰² For Protestants, competing with Jews (and losing to

Side was socialism, not “education” for its own sake. *See* GORELICK, *supra* note 56, at 7.

⁹⁹ DAN A. OREN, *JOINING THE CLUB: A HISTORY OF JEWS AND YALE* 52 (1985).

¹⁰⁰ *See* MICHAEL SELZER, “KIKE!”: A DOCUMENTARY HISTORY OF ANTI-SEMITISM IN AMERICA 164 (1972) (“As commonly encountered they lack many of the qualities that mark the civilized man: courage, dignity, incorruptibility, ease, confidence. They have vanity without pride, voluptuousness without taste, and learning without wisdom.” (quoting H.L. MENCKEN, *TREATISE ON THE GODS* (1922))).

¹⁰¹ OREN, *supra* note 99, at 43, 65.

¹⁰² *See id.* at 43. There was a pattern throughout the nineteenth century at Yale and

Jews) was beneath their dignity. Instead, Protestants sought their education in the extracurricular life of the institution, from which Jews were largely excluded.¹⁰³ Once again, Jewish approach and emulation turned into Gentile avoidance and differentiation.¹⁰⁴

There is another problem with the weak version of the "Jewish educational values" thesis. The thesis is agnostic as to whether Jews value education "for its own sake," or as a means of getting ahead. How did Jewish parents feel about advanced education that was *not* likely to result in improved job prospects? My parents certainly expected me to go to college and they helped me to attend the private college of my choice. But my parents were not happy when the effect of my education was to draw me away from law (which they always expected I would enter) and towards the study of religion and anthropology. The concept of a Jewish value placed on secular education is just too vague to be satisfying if it cannot distinguish between pure love of learning and the pursuit of the credentials necessary for economic success. It is an unsatisfying hook upon which to hang the concept of "chosenness."¹⁰⁵

In sum, I have sought to problematize the notion that Jews have succeeded in the United States because they arrived with a set of "Jewish values" that turned out to be precisely the values that make for success in America. I cannot definitively disprove that "Jewish values" have had a role in Jewish success. But I have shown the leaps of faith that the adherents to the "Jewish values" thesis must make to transform the deep cleavages of modern Jewish experience into the orderly transmittal of an ancestral tradition. I have also demonstrated that the "Jewish values" thesis is an example of a long-standing Jewish

similar institutions of emphasizing extracurricular life, rather than academic effort. The presence of the Jewish "greasy grinds" was seen as exacerbating this pattern and standing in the way of educational reform.

¹⁰³ See *id.* at 52.

¹⁰⁴ The battle over the educability of the Jews is still being fought at Yale, albeit over a different piece of turf. A group of Orthodox Jewish students has demanded the right to be freed from the requirement of living in Yale dormitories on the grounds that the sexual mores of the dorms are violative of Jewish law. Yale's response is that one cannot truly obtain a Yale education without participating in dormitory life. For a discussion, see Samuel G. Freedman, *Yeshivish at Yale*, N.Y. TIMES MAGAZINE, May 24, 1998, at 32. Once again, we are told that the Jewish quest for "education" stops at the classroom and one cannot obtain a Yale education solely from the classroom. The difference is that Yale now claims to provide an education that teaches diversity and tolerance, rather than one that teaches the manly virtues of the American upper class, and that it is only a small minority of Jews who are said to be uneducable. But the terms of the battle—the criticism of Jews for thinking that the classroom is where education takes place—has remained the same.

¹⁰⁵ Calvinists have a different view. See MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 115, *passim* (Talcott Parsons trans., 1958).

assimilatory strategy, one which sacrifices any hope of understanding the Jewish experience in its particularity. In light of these discussions, one ought to be open to alternative explanations.

III. EXAMINING THE CONTRABAND EXPLANATIONS OF JEWISH SUCCESS

If one must strain to use the existence of Jewish values to explain Jewish success, where else might one turn for an explanation? Farber and Sherry catalog a set of alternative explanations that they say are anti-Semitic and therefore off limits. Farber and Sherry are clearly correct that all of the explanations they reject resonate powerfully with claims anti-Semites have made in defense of their hatred and fear of the Jews. The rabbinical tradition encourages us to build "fences" around that which Jewish law most prohibits (*e.g.*, working on the Sabbath), so that our inevitable transgressions can take place at the distant margins of the prohibition (*e.g.*, lighting a candle), rather than at its core.¹⁰⁶ But in intellectual life, there is such a thing as being *too* safe. Underlying each of the supposed anti-Semitic explanations Farber and Sherry reject are historical generalizations about the patterns of Jewish assimilation in America that can, and must, be rationally discussed. These explanations go some distance towards accounting for the patterns of Jewish experience in contemporary America.

A. *Jewish Conspiracy*

Farber and Sherry rightly criticize the view that "Jews succeed as a consequence of a powerful and pervasive Jewish conspiracy."¹⁰⁷ The outer "fence" around the conspiracy principle is the notion of Jewish power itself. Farber and Sherry are not alone in their discomfort with open discussions of power exercised by Jews on their own behalf. Indeed, it has been observed by African American and Jewish scholars alike that Jews' continued vision of themselves as victims, and their denial of the power they in fact wield in the United States, is the major obstacle to black-Jewish mutual understanding.¹⁰⁸

¹⁰⁶ I ask the reader not to take this reference as an example of the successful inter-generational transfer of Jewish traditional knowledge. I learned this concept as an adult in a secular setting—albeit before I learned First Amendment overbreadth doctrine, which is built upon the same basic concept.

¹⁰⁷ Farber & Sherry, *Radical Critique*, *supra* note 6, at 871–72.

¹⁰⁸ Compare Shaw, *supra* note 76, at 325–26 (discussing the African American side of the issue), with Cheryl Greenberg, *Pluralism and its Discontents: The Case of Blacks and Jews*, in INSIDER/OUTSIDER, *supra* note 13, at 76 (discussing the Jewish side of the issue).

The question of Jewish wealth and power and their deployment is much discussed in the Jewish studies literature.¹⁰⁹ I shall note a few examples here. Hannah Arendt argued that Western European Jews had considerable power prior to World War I, due to their international contacts (valued for both trade and diplomacy) and their finance capital.¹¹⁰ On the level of individual industries, recent studies have shown that, for example, Jews did in fact exercise substantial control in the banking industry in late nineteenth and early twentieth century Austria.¹¹¹ Moving to the United States, studies of Hollywood acknowledge the dominant role of Jews in the movie industry¹¹²—such that “calling [it] Jewish-controlled is little more than a statistical observation.”¹¹³ Jews exercise political power in the United States as well. Jews are “the best-informed, and most activist constituency in the American electorate,”¹¹⁴ and are “prodigious givers” to political campaigns, contributing one-fourth to one-half of all Democratic party campaign funds and a substantial proportion of the party’s active volunteer cohort.¹¹⁵ Jews are disproportionately represented in Congress and on the faculties of elite universities.

Do Jews use power *as Jews*—that is, on behalf of Jewish self-interest?¹¹⁶ Not often enough, in the view of some scholars. Arendt was critical of what she saw as Jewish passivity. She observed that the wealthiest Jews “had . . . little political idea . . . of what they wanted to carry out” and were more committed

¹⁰⁹ For an historical survey see BIALE, *supra* note 78.

¹¹⁰ See ARENDT, *supra* note 30, at 15–17; *see also*, BOYARIN, *supra* note 55, at 110 (discussing internationalism and the role of international trade in traditional Jewish society), 199 (discussing the internationalism of the Yiddish language and characterizing it as transgressive and a “border-smuggler”); LEVINE, *supra* note 73, at 63 (discussing international contacts and their use of economic power by Jews in Poland); KAHAN, *supra* note 50, at 85 (discussing international Jewish contacts and economic power in Eastern Europe in general); Victor Karady, *Jewish Entrepreneurship and Identity Under Capitalism and Socialism in Central Europe*, in ESSENTIAL OUTSIDERS, *supra* note 3, at 131 (discussing the use of Jewish contacts in Hungary); Rabkin, *supra* note 44, at 7–8 (noting Jewish internationalism as an asset that helped the Jews advance in science).

¹¹¹ See Beller, *supra* note 77 (discussing the use of Gentile board members to disguise Jewish control).

¹¹² See MICHAEL ROGIN, BLACKFACE, WHITE NOISE: JEWISH IMMIGRANTS IN THE HOLLYWOOD MELTING POT 16 (1996).

¹¹³ GOLDBERG, JEWISH POWER, *supra* note 73, at 280.

¹¹⁴ Feingold, *supra* note 76, at 109.

¹¹⁵ See GOLDBERG, JEWISH POWER, *supra* note 73, at xxi.

¹¹⁶ For discussions defining Jewish power (as opposed to the power of individuals who happen to be Jews), see BIALE, *supra* note 78, at 7, 178 and GOLDBERG, JEWISH POWER, *supra* note 73, at 19. *See also* ARENDT, *supra* note 30, at 15 (speaking of post-World War I Jewry as being “atomized into a herd of wealthy individuals”).

to creating an alliance “with governments, with authority as such,” than to allying themselves “with any specific government.”¹¹⁷ J.J. Goldberg, a journalist who has written extensively on Jewish power, argued that very few wealthy Jews have “been willing to use . . . economic clout to advance Jewish interests.”¹¹⁸ As to the movie industry, Goldberg concluded that “the Jews who went to Hollywood were not interested” in allowing communal concerns to shape the industry’s projected image of the Jew.¹¹⁹ Michael Rogin argues that this was not true prior to the 1930s, but that “[t]he [Jewish] moguls left their Jewish wives for gentile women in the 1930s, and mostly eliminated Jewish life from the screen.”¹²⁰ Turning to government, some Jews in high positions within the New Deal administration resisted hiring additional Jews (particularly into important and visible positions).¹²¹ As to the print media, *The New York Times* was owned by a German-Jewish-American family as of 1897, but was hostile to Eastern European Jewish immigration. The newspaper, for example, printed such phrases as “the hatchet-faced, sallow, rat-eyed young men of the Russian Jewish colony.”¹²² Indeed, *The New York Times* excluded Jews from senior editorial positions until 1961.¹²³

But these observations may reflect a presentist conception of Jewish self-interest. Arendt is critical of wealthy Jews for not acting on the stage of partisan politics, but the stakes of picking the wrong side must have been frighteningly high. Maintaining the links to government that made possible the “mild pressure for minor purposes of self-defense”¹²⁴ might have seemed at the time

¹¹⁷ ARENDT, *supra* note 30, at 25; *see also* BIALE, *supra* note 78, at 5 (noting Arendt’s complaints about the Jews having “avoided all political action for two thousand years”).

¹¹⁸ GOLDBERG, JEWISH POWER, *supra* note 73, at 75.

¹¹⁹ *See id.* at 288.

¹²⁰ ROGIN, *supra* note 112, at 86. When Jewish filmmakers did portray Jewish life, it was intra-generational conflict, rather than anti-Semitism, that was the subject. *See id.* at 89 (“antisemitism is *The Jazz Singer*’s structuring absence”); *see also* Norman L. Kleeblatt, “Passing” Into Multiculturalism, in TOO JEWISH? CHALLENGING TRADITIONAL IDENTITIES 3, 5 (Norman L. Kleeblatt ed., 1996) [volume hereinafter cited as TOO JEWISH?] (“[T]hrough the process of assimilation and under the formalist hegemony of postwar modernism, many Jewish artists, writers, performers, and theater, film, and television producers—like many other successful Jews—lost their culturally distinct voices.”)

¹²¹ *See* ROBERT JEROME GLENNON, THE ICONOCLAST AS REFORMER: JEROME FRANK’S IMPACT ON AMERICAN LAW 78–80 (1985). More than 15% of Roosevelt’s top-level appointees were Jews when Jews were barely 3% of the population. *See* BENJAMIN GINSBERG, THE FATAL EMBRACE: JEWS AND THE STATE 104 (1993).

¹²² MAYO, *supra* note 73, at 172.

¹²³ *See* GOLDBERG, JEWISH POWER, *supra* note 73, at 301.

¹²⁴ ARENDT, *supra* note 30, at 24.

the course of action that Jewish self-interest required.¹²⁵ Jews in government during the New Deal who worked to avoid the perception of Jewish domination of the New Deal by refusing to hire additional Jews into positions of influence were probably acting in what they saw to be the self-interest of the Jews. The same can be said of the American Jews of German origin, whose initial stance was to oppose mass Eastern European Jewish immigration and who took concerted steps to bring about the immigrants' complete assimilation once they arrived. The Jews took these positions in large part because they feared renewed anti-Semitism.¹²⁶ Hindsight makes us think they were wrong. We, having experienced little if any anti-Semitism in our own lives, do not think it acceptable to let the fear of anti-Semitic backlash shape our conduct. But they may well have been acting as Jews, on behalf of Jews, by their own best lights.

There are many signs that Jewish individuals in positions of power in the United States do act to safeguard the interests of other Jews and of the Jews as a people. Jews in Congress are consulted when decisions regarding Israel's national security are made by the executive branch.¹²⁷ Influential Jewish newspaper columnists police the political rhetoric of the country for signs of anti-Semitism.¹²⁸ Jews spend their political campaign dollars to help reelect their friends and defeat their enemies—with those statuses essentially defined by the candidates' stance on Israel.¹²⁹ Jews have historically used their involvement in the elite of the legal profession to further Jewish interests in civil rights, free speech, and church-state separation—and, as was the case in *Board of Regents of the University of California v. Bakke*¹³⁰ and is now the case in the affirmative action debate, to oppose civil rights visions that they believe run counter to Jewish self-interest.¹³¹

¹²⁵ Cf. BIALE, *supra* note 78, at 32 (characterizing the prophets Isaiah and Jeremiah as "neither pacifists nor apolitical moralists" but as expressing a "shrewd policy of neutralism and accommodation to the imperial world").

¹²⁶ For a discussion on the opposition to immigration, see SORIN, *supra* note 59, at 51. On the embrace of Americanization, see *id.* at 62. See also BIALE, *supra* note 78, at 194 ("The schoolteachers who insisted most vociferously that their immigrant pupils abandon the languages and cultures of their origins were typically Jews.").

¹²⁷ See GOLDBERG, JEWISH POWER, *supra* note 73, at 255.

¹²⁸ See *id.* at 291.

¹²⁹ See *id.* at 267–69.

¹³⁰ 429 U.S. 953 (1976).

¹³¹ Justice Harry Blackmun, who was late to come to a final conclusion in *Bakke*, took note of the fact that a brief filed by prominent Jewish law professor Alexander Bickel in opposition to affirmative action was "the 'accepted' Jewish approach":

It is to be noted that nearly all the responsible Jewish organizations who have filed amicus briefs here are on one side of the case. They understandably want "pure"

Yet for Farber and Sherry, the notion that Jews do have power in the United States and use that power to assist fellow Jews is too "jarring" to be entertained.¹³² Here is the account they place beyond the legitimate intellectual pale.¹³³ Legal historian G. Edward White points out that Felix Frankfurter was instrumental in placing many top graduates of elite law schools in New Deal governmental positions, and that Frankfurter emphasized law school grades in determining the "best" candidates for the jobs.¹³⁴ To White,

the "meritocratic" system, as applied to elite legal education, in fact rewards one kind of skill, performance on a particular kind of analytical exercise; and that skill is tested by those who themselves have demonstrated an aptitude for such exercises. The skill is then transposed into an "objective" criterion for "merit," as if "anyone" could recognize that those who demonstrate the skill are "better" lawyers than their peers. Other skills arguably as important in the effective practice of law, such as empathy, judgment, dedication, or reliability, are deemed incapable of "objective" measurement. As structured, the meritocratic system insures its self-perpetuation, since the qualities deemed important for placement and advancement in the legal profession are the "objective" qualities that make one "better" in the first place. Thus, those who emerge in positions of power within the system will have demonstrated the qualities, and by insisting on the "importance" of such qualities those persons

equality and are willing to take their chances with it, knowing that they have the inherent ability to excel and to live with it successfully. Centuries of persecution and adversity and discrimination have given the Jewish people this great attribute to compete successfully and this remarkable fortitude.

Harry A. Blackmun, Memorandum to the Conference of May 1, 1978, in BERNARD SCHWARTZ, *BEHIND BAKKE: AFFIRMATIVE ACTION AND THE SUPREME COURT* app. at 258 (1988); Tony Mauro, *Back to Bakke: The Recently Released Thurgood Marshall Papers Cast New Light on California's Affirmative Action Supreme Court Case*, CAL. LAW., Jan. 14, 1994, at 50, 54 (discussing same); Mark Tushnet, *The Supreme Court and Race Discrimination, 1967-1991: The View From the Marshall Papers*, 36 WM. & MARY L. REV. 473, 529-31 (1995) (same). Blackmun obviously wrestled with the disparity between the Jewish position and his own and resolved the conflict through a variant of the "Jewish values" thesis—albeit one in which Jewish fortitude rather than Jewish intelligence is central. Of course, in anti-Semitic hands (unlike in Justice Blackmun's hands), even the observation that the Jews are good at surviving persecution becomes an insult. For an account of this phenomenon, see HERZOG, *supra* note 96, at 320.

¹³² See Farber & Sherry, *Radical Critique*, *supra* note 6, at 868.

¹³³ This example is not discussed in the "conspiracy" section of their article, but instead in the section introducing the "radical critique of merit." *Id.* at 867-68.

¹³⁴ See G. Edward White, *Justice Frankfurter, the Old Boy Network, and the New Deal: The Placement of Elite Lawyers in Public Service in the 1930s*, 39 ARK. L. REV. 631 (1986), reprinted in WHITE, *INTERVENTION*, *supra* note 16, at 149.

justify their own success.¹³⁵

Consistent with their method, Farber and Sherry do not take issue with White's argument that characteristics not tested on the Harvard Law School examination of the 1930s might contribute to good lawyering. Instead, they observe that they find it "somewhat jarring to recall that the beneficiaries of [Frankfurter's] placement network were disproportionately Jewish"¹³⁶—because if the merit criteria Frankfurter used are not the only possible merit criteria, "Frankfurter's conduct looks disturbingly like special favoritism for members of his own ethnic group."¹³⁷ Because they imply, it would be patently offensive to accuse Frankfurter of any such thing, we *must* believe that scoring a 76.5 rather than a 76 on a Harvard exam makes one the "better" man, as Frankfurter did.¹³⁸ To believe otherwise is to be an anti-Semite.

To use Farber and Sherry's phrase, "that way lies madness."¹³⁹ Frankfurter genuinely believed that the criteria on which he excelled were the most excellent criteria upon which to base determinations of merit. We might disagree with Frankfurter about what "merit" is, but that does not make *him* someone who self-consciously manipulated his merit standards to suit the needs of his own group. No accusation of "special favoritism" in that sense need be made. But we can still ask, as White does, *why* Frankfurter believed that Harvard grades were the best measure of the merit of a Harvard man. It would be foolish to think that he was *not* influenced by what he knew as a Jew—namely, that Harvard alumni who hired Harvard men for jobs were incapable of recognizing "empathy, judgment, dedication, or reliability" in a Jew, but could be forced to recognize that 76.5 was a higher number than 76 regardless of who earned the 76.5. Some of what Frankfurter knew about the world he knew as a Jew, and his willingness to bring his Jewish knowledge to bear in the exercise of his public role helped the Jews. In so doing, he exercised power in the interest of his group.

B. Jewish Co-optation

In their book (although not in their article), Farber and Sherry pose and reject the possibility that "Jews . . . succeed because the powerful elites allow them to."¹⁴⁰ The theory here is that by allowing one minority group (here, the

¹³⁵ WHITE, INTERVENTION, *supra* note 16, at 167.

¹³⁶ Farber & Sherry, *Radical Critique*, *supra* note 6, at 868.

¹³⁷ *Id.*

¹³⁸ See WHITE, INTERVENTION, *supra* note 16, at 166.

¹³⁹ Farber & Sherry, *Radical Critique*, *supra* note 6, at 879.

¹⁴⁰ FARBER & SHERRY, BEYOND ALL REASON, *supra* note 7, at 65.

Jews) to succeed, the dominant majority creates the (false) appearance that all minorities can succeed. Implicit in this theory is that the Jews allow themselves to be placed in this role—perhaps even cultivate it—and in so doing participate in the oppression of those below them in the social hierarchy (most saliently, blacks).

It is easy, of course, to dismiss this scenario as impossibly reified—unless one means to suggest that a compact was signed between representatives of “the Jews” and “powerful elites” to institutionalize this process of co-optation. But take away the reification, and the story begins to resemble the historical reality of a stage of Jewish history in Eastern Europe. A substantial amount of literature suggests that the Jews, through their involvement in agricultural management¹⁴¹ and the alcoholic beverage trade,¹⁴² did in fact “contribut[e] to the plight of the serf”¹⁴³ by playing one of the few economic roles available to them.¹⁴⁴ Recast in terms of modern American conflicts, there are thus a number of questions that ought not be treated as off limits to legitimate discourse. My focus here will be on two: (a) whether Jews benefit (or benefited at key times in the past) from the fact that American society was organized around white-black racism and not anti-Semitism¹⁴⁵ and (b) whether Jews, like other immigrant groups of disputed racial identity before them, used the images and vocabularies of white-black racism to secure their whiteness in America.¹⁴⁶

The conventional Jewish answer to these questions is a passionate no, and

¹⁴¹ For a discussion of the *arenda*, see LEVINE, *supra* note 73, at 61. For a discussion of the intolerability to the peasants of working under Jewish managers, see *id.* at 72.

¹⁴² See *id.* at 9.

¹⁴³ *Id.*; see also Hillel J. Kieval, *Middleman Minorities and Blood: Is There a Natural Economy of the Ritual Murder Accusation in Europe?*, in *ESSENTIAL OUTSIDERS*, *supra* note 3, at 216 (discussing the *arenda* and arguing that “whether willingly or by necessity, [the] Jews implicated themselves in an exploitative economic system and, in the process, earned the animosity of the peasants”). Kieval sees this as an instance of a broader pattern of sensitive functions being left to members of those minority groups that are the most culturally distinct and therefore the least threatening to those in power. See *id.* at 213.

¹⁴⁴ See David Biale, *Introduction*, in *INSIDER/OUTSIDER*, *supra* note 13, at 5 (arguing that Jews historically occupied a “liminal zone” and survived “precisely because they were able to establish themselves close to centers of power and negotiate between competing elite and popular forces”).

¹⁴⁵ See ROGIN, *supra* note 112, at 165.

¹⁴⁶ The most significant question I am not focusing on here is whether Jews who operated businesses in the black ghetto engaged in exploitative business practices. This is consistent with my decision not to undertake a thorough analysis of the issue of Jewish entrepreneurial ethics, as a way of limiting the already-broad scope of this Article. It should not be taken to mean that I find the question unimportant or beyond the range of proper inquiry.

there is much to support that view. There was little direct competition between blacks and Jews for scarce jobs and housing in the large Northern cities that attracted the lion's share of Eastern European Jewish emigration.¹⁴⁷ That emigration—which came to a legally mandated end in 1925—overlapped the migration of blacks from the rural South to the urban North. But the peak of Jewish emigration predated the peak of black internal migration by a generation.¹⁴⁸ Those African Americans who lived in the North had no history of involvement in the garment industry (the chief employer of Jews) in the period before the Jews arrived. When blacks later sought entry into the industry and its unions, they were readily admitted. The same was true of neighborhoods: Jews did not respond with threats and violence when blacks sought to live in Jewish neighborhoods. The same could not be said of many other white immigrant communities.¹⁴⁹ As Jewish neighborhoods became black neighborhoods, Jews kept their businesses open and brought valuable goods and services to a community that was redlined by mainstream commercial interests.¹⁵⁰ Finally, Jews often found themselves subject to the same forms of discrimination that blacks faced. Many of the institutions that formed the “institutional base of the . . . national elite” excluded both African Americans and Jews.¹⁵¹

American Jews, as individuals and through Jewish institutions, threw their support behind the extension of full civil rights to blacks. The Yiddish press protested the plight of African Americans;¹⁵² individual Jews provided crucial

¹⁴⁷ See Diner, *supra* note 5, at 98–99.

¹⁴⁸ See JOEL PERLMANN, *ETHNIC DIFFERENCES: SCHOOLING AND SOCIAL STRUCTURE AMONG THE IRISH, ITALIANS, JEWS, AND BLACKS IN AN AMERICAN CITY, 1880–1935*, at 163 (1988) (“The great migrations of blacks from the South began during World War I, continued into the 1920s, slowed during the Depression years, and grew immensely during and after World War II. Prior to these migrations, black people were only a small proportion of the population in the northern cities.”).

¹⁴⁹ See Diner, *supra* note 5, at 97. This was in part because Jews, unlike Italians, for example, were not generally homeowners and thus did not face loss of capital as property values declined.

¹⁵⁰ This is of course the benign version of the story: the Jews who remained in business in the black ghetto saw themselves as the good guys for having stayed. See *id.* at 100. The counter-story is that Jewish businessmen exploited the economic weakness of the black community. Whichever side of the story one believes, it is certainly true that doing business in the ghetto put Jews in the position to bear the brunt of black hatred of white supremacy—just as Jews had been positioned to catch peasant animosity under the *arenda* and *propinacja*. It is never good for a minority group to become the “most visible representation” of oppression. See LEVINE, *supra* note 73, at 70.

¹⁵¹ See GINSBERG, *supra* note 121, at 82–83.

¹⁵² See, e.g., ROGIN, *supra* note 112, at 11.

financial and legal support to the civil rights movement throughout its modern history.¹⁵³ Indeed, Jews were often found in official leadership positions in largely black civil rights organizations.¹⁵⁴ Young Jews formed the overwhelming majority of the white volunteers who traveled to the South for Freedom Summer.¹⁵⁵ Indeed, for many Jewish families with strong histories of civil rights activism, their partnership in the fight for black civil rights was the central meaning of their Jewish identity.

In the face of this history, how can it be said that the Jews in any way benefited from or contributed to black suffering? Identifying with blacks and their cause—to the point at which Jews became the most black-associated ethnic group in America¹⁵⁶—hardly seems the way to protect one's whiteness. Yet contemporary scholars—black and Jewish and neither of the above—have begun to come around to a more complex view of black-Jewish relations.

The America to which the Jews came was a racialized society.¹⁵⁷ It was by no means a foregone conclusion that the Jews—and, in particular, the Eastern European Jews—would be categorized as white.¹⁵⁸ Jews did not make the American race system, but they also were not passive bystanders in the process of their racial classification. Jews *wanted* to be seen as white, and “were willing

¹⁵³ I put it this way to acknowledge the earlier antecedents of the post-World War II Civil Rights Movement, in which Jews did not play as substantial a role. See JOHN EGERTON, *SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH 177-79* (discussing Joseph Gelders' role in creating the Southern Conference for Human Welfare), 238 (discussing lack of involvement by the Jewish community in social reform in the South); Jonathan Kaufman, *Blacks and Jews: The Struggle in the Cities, in STRUGGLES IN THE PROMISED LAND*, *supra* note 5, at 110 (noting that two-thirds to three-fourths of the money raised by civil rights groups during the core period of the Civil Rights Movement came from Jews).

¹⁵⁴ See Shaw, *supra* note 76, at 325 (“[Jews’] relationship with African Americans has been very complex, but for the most part it has not been one of equals Their involvement in the early Civil Rights Movement and in civil rights organizations working on behalf of African Americans was not limited to the role of supporters; often they were among the leaders. There were no comparable roles for African Americans in the affairs of the Jewish community.”).

¹⁵⁵ See Kaufman, *supra* note 153, at 110.

¹⁵⁶ See ERIC LOTT, *LOVE AND THEFT: BLACKFACE MINSTRELSY AND THE AMERICAN WORKING CLASS* 248 n.26 (1993); ROGIN, *supra* note 112, at 165.

¹⁵⁷ See ROGIN, *supra* note 112, at 13.

¹⁵⁸ See Itzkowitz, *supra* note 72, at 185 (noting that John Higham thinks Jews were seen as unproblematically white; whereas, Robert Singerman takes the position that they were often classified as an unassimilable Asiatic “element”); see also DAVID A. HOLLINGER, *POSTETHNIC AMERICA: BEYOND MULTICULTURALISM* 30 (1995) (discussing that the whiteness of the Jews and other disliked minorities was uncontested only when blacks were in the picture).

to be seen as 'white' . . . , as part of a majority whose very self-definition as a majority was based on the exclusion of those termed 'nonwhite.'"¹⁵⁹ It is true that Jews did not argue against the discrimination they faced by saying, in effect, that America was making a categorical mistake by (inappropriately) treating Jews the way it (appropriately) treated blacks. However, more subtle processes of racial distancing were in fact taking place on a cultural level.

As Michael Rogin has observed in his study of Jewish blackface minstrelsy and the early years of Jewish Hollywood, "Jewish immigrants and their children inherited and often struggled against the racial representations that signified American belonging. But they also—witness Selznick in *Gone With The Wind*—made those representations their own."¹⁶⁰ Rogin's story starts with Jewish involvement in blackface minstrelsy—the theatrical and musical performance by whites "blackened up" to look like and caricature blacks.¹⁶¹ Eastern European Jews took over the lead role in blackface minstrelsy from the Irish in the late nineteenth century.¹⁶² It was Jews who, in the early twentieth century, moved blackface from the stage to the screen and continued to explore new ways of representing African Americans and their experience in film.¹⁶³ This places Jews at the forefront of developing "white modes of representing blacks that take the form of appropriative identification."¹⁶⁴ The very act of impersonating blacks and claiming to speak for them, and then wiping off the burnt cork and reverting to apparent whiteness, "distanced [the Jews and the Irish before them] from the people they parodied."¹⁶⁵ Rogin notes, "Stereotypes located within both pariah groups were exteriorized as black ... and left (along with actual blacks) behind."¹⁶⁶

Might there be elements of "appropriative identification" in Jewish advocacy for black civil rights as well? There are to Rogin,¹⁶⁷ and I agree. In

¹⁵⁹ Biale, *supra* note 144, at 4. This was also true in other intensely racialized societies to which Jews emigrated—for example, Australia and South Africa. See Itzkowitz, *supra* note 72, at 197 n.21.

¹⁶⁰ ROGIN, *supra* note 112, at 165.

¹⁶¹ See LOTT, *supra* note 156, at 3.

¹⁶² See ROGIN, *supra* note 112, at 57–58.

¹⁶³ See *id.* at 78–79.

¹⁶⁴ *Id.* at 18.

¹⁶⁵ *Id.* at 57.

¹⁶⁶ *Id.* at 99.

¹⁶⁷ See *id.* at 16 ("Both civil rights and minstrelsy were ways of establishing an American imagined community, making new identities out of the diverse peoples of the Old World."). Lott has cast Rogin's argument in Marxist terms, along with their implications of exploitation. See LOTT, *supra* note 156, at 249 n.26 (characterizing Rogin's argument as demonstrating "the surplus symbolic value generated by Jews from black culture").

their advocacy for black causes, Jews were careful to locate themselves as sympathetic and empathetic whites. The same was true of the entertainment industry. Jewish blackface performers and their Hollywood successors at times used the entertainment media to paint a sympathetic picture of blacks. But even Jewish sympathetic portrayal of blacks "exposed the contrasting situations of Jews and blacks that allowed Jews to rise above the people whose cause and whose music they made their own."¹⁶⁸ The very position of speaking on behalf of another has appropriative overtones¹⁶⁹—for all that the advocates have no such intent.

Indeed, the resonances between white advocacy for black causes and the tradition of blackface minstrelsy was recognized by Judge Charles Wyzanski, a Jew and prominent American jurist, in one of the leading cases in American labor law. The case, *Emporium Capwell Co. v. Western Addition Community Org.*,¹⁷⁰ presented the question whether black employees in a unionized department store were required by law to channel their civil rights complaints through their white-dominated union. The Supreme Court, in an opinion by Justice Thurgood Marshall, eventually answered that question in the affirmative.¹⁷¹ Judge Wyzanski had taken the opposite position in an impassioned dissent in the court below.¹⁷² He said: "in presenting non-white issues non-whites cannot, against their will, be relegated to white spokesmen, mimicking black men. The day of the minstrel show is over."¹⁷³

Jewish civil rights advocacy also involved an appropriative identification of a different sort. By staking a claim to the position of preeminent advocates for civil rights, Jews (and Jewish lawyers in particular) located themselves as the truest representatives of American's highest (if least fulfilled) values. Civil rights advocacy was thus an arena through which American Jews played out the cultural dynamic that Western European Jews had played out before them. That cultural move also had more prosaic benefits. Advocating for the blacks' interest in civil rights allowed Jews tacitly to argue for their own fuller inclusion in American society without being forced to resort to special pleading.¹⁷⁴

¹⁶⁸ ROGIN, *supra* note 112, at 68.

¹⁶⁹ See Shaw, *supra* note 76.

¹⁷⁰ 420 U.S. 50 (1975), *rev'g* *Western Addition Community Org. v. NLRB*, 485 F.2d 917 (D.C. Cir. 1973).

¹⁷¹ See *id.* at 60-70.

¹⁷² See *Western Addition Community Org. v. NLRB*, 485 F.2d 917 (D.C. Cir. 1973) (Wyzanski, J., dissenting).

¹⁷³ *Id.* at 940. The fact that the union was likely to take a position adverse to that of the black employees was part of Judge Wyzanski's objection—but not all of it.

¹⁷⁴ See GINSBERG, *supra* note 121, at 99 (noting that very few blacks were in the position to benefit from the reforms Jewish advocates gained in spheres like higher education,

Moving from subtle cultural benefits to the direct economic benefits that Jews have drawn from societal discrimination against blacks, current scholarship shows a complex picture. While Jews and blacks were not in direct economic competition for jobs in the garment industry, they did compete for limited public resources in a number of respects. One of the chief routes of economic mobility for the Eastern European Jewish immigrants was the civil service. For college-educated Jews (and college-educated Jewish women in particular), positions as public school teachers were coveted.¹⁷⁵ The civil service was also important to those Jews who did not make it into or through college. Secure white-collar jobs in the post office and elsewhere in the government bureaucracy were the best available pathway for those Jews who had not been successful in the pursuit of higher education and were too capital-poor or risk-averse to go the entrepreneurial route.¹⁷⁶ Civil service employment of many sorts was closed to blacks in the period of Jewish upward mobility, either de jure or de facto (in that absence of prior educational opportunities made the civil service tests an insuperable barrier for them).¹⁷⁷ The same is true of the exclusion of blacks from many educational opportunities and from the post-World War II development and public subsidization of residential suburbs.¹⁷⁸ Jews faced less competition than they otherwise would have because blacks were disabled from competing within the niches that were so important for Jewish progress. Over time, blacks did challenge Jews within traditionally Jewish economic niches. When blacks began to insist upon changing the terms of the competition—whether through the New York City school decentralization battles of the 1960s or the affirmative action battles of the 1990s—Jewish advocacy for the African-American cause and Jewish self-interest came into sharp conflict, and issues of American Jewish identity came

but many Jews were).

¹⁷⁵ See GORELICK, *supra* note 56, at 87 (discussing the importance of teaching); Karen Brodtkin Sacks, *How Did Jews Become White Folks?*, in RACE 78, 83–84 (Steven Gregory & Roger Sanjek eds., 1994).

¹⁷⁶ See GAY, *supra* note 53, at 57 (discussing the importance of civil service to the Jews); GILMAN, SMART JEWS, *supra* note 19, at 22 (mentioning the post office as a source of jobs that brought Jews into the middle class); BETH S. WENGER, NEW YORK JEWS AND THE GREAT DEPRESSION: UNCERTAIN PROMISE 22 (1996).

¹⁷⁷ Civil service tests were designed neither to help Jews nor to hurt blacks. They were part of an effort by the Protestant establishment to clean up city politics by, among other things, ousting the Irish-led patronage system from control of city employment. See GORELICK, *supra* note 56, at 136. The Jews were the beneficiaries. There is no reason to think that these tests were “merit”-based in the sense of being job-related. They merely substituted one non-validated method of selection for another.

¹⁷⁸ See Sacks, *supra* note 175, at 94–95 (“The result of these [rascist] policies was that African-Americans were totally shut out of the suburban boom.”).

into sharp focus.

Finally, it seems almost impossible to deny that Jews have benefited from the fact that in America, perhaps for the first time in their historical experience, some other group occupies the role of most-hated, most-feared outsider.¹⁷⁹ Because Jews did face discrimination in this country, they did not see themselves as the beneficiaries of white privilege.¹⁸⁰ But no group stands solely on its own in the dynamic of privilege and discrimination. Up until the closure of the immigration to Jews in 1925, discrimination against Jews in America was not *de jure*,¹⁸¹ and the *de facto* discrimination that did exist dissipated as quickly as it did in part because opportunities could be opened to Jews without disturbing the overall racialized structure of American society.¹⁸²

C. America as Judaizer

Farber and Sherry lay out and reject the claim that Jews have succeeded in America by making America Jewish. They are correct that the claim has an anti-Semitic history. For as long as there has been a substantial Jewish presence in America, some critics of American economic life have linked all that is wrong with America to the Jewish presence in the American economy. The Jew's "imagined severed ties to the land and to tradition" and "obsession with money" mapped onto social critics' analysis of what was wrong with

¹⁷⁹ See MAYO, *supra* note 73, at 180 ("The presence of a variety of ethnic, religious, and racial groups that absorbed much of the animosity, undoubtedly helped to mute anti-Jewish expressions."). Blacks were and are the chief occupants of the most-hated-minority role. But, at least for some purposes, even other (now) white ethnic groups were more hated and feared than were the Jews in America. For example, Catholics bore much of the brunt of internationalist-conspiracy theorizing in America. See, e.g., *id.* at 180; Lipset, *supra* note 39, at 9.

¹⁸⁰ See, e.g., Greenberg, *supra* note 108, at 83 ("[W]e have unreflectively enjoyed the privileges of a 'Euro-American' whiteness we have denied."), 75 (Jews "confus[ed] meritocracy with white privilege," and "attributed their own success solely to hard work and personal commitment, ignoring the structural constraints race imposed on opportunity.").

¹⁸¹ See KAHAN, *supra* note 50, at 101 (arguing, in the language of economics, that the Jews derived "psychic income" from the absence of *de jure* discrimination against them).

¹⁸² Furthermore, Jewish upward mobility helped to create the appearance that once-despised groups could make it in America and therefore contributed to the isolation and negative stereotyping of groups that faced greater obstacles to success. See GORELICK, *supra* note 56, at 125. For similar analyses of the treatment of Asian-Americans as "model minorities," see, for example, Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby: LatCrit Theory And the Sticky Mess of Race*, 10 LA RAZA L.J. 499, 551 (1998), jointly published in 85 CAL. L. REV. 1585, 1637 (1998); Frank H. Wu, *Changing America: Three Arguments About Asian Americans and the Law*, 45 AM. U. L. REV. 811, 814 (1996).

America.¹⁸³ Thus, Henry Adams was not alone among the New England brahmans in complaining that there was no place for him (and those like him) in "the society of Jews and brokers" that America had become.¹⁸⁴ From the foreign perspective, too, America looked as if it had become Jewish. German sociologist Werner Sombart claimed that "what we call Americanism is nothing else . . . than the Jewish spirit distilled."¹⁸⁵ Nonetheless, there can also be little doubt that American Jews have succeeded in part because they have made America a more hospitable place for themselves. They have done so by changing those corners of America in which they disproportionately live. And they have also changed American civic culture as a whole.

First-generation Eastern European Jewish immigrants clustered in a few neighborhoods of a few American cities, with the Lower East Side of New York prominent among them.¹⁸⁶ New York was the quintessential immigrant city: by 1900, 76% of the population of New York consisted of the foreign-born and their children.¹⁸⁷ While white Protestant elites still had control of the city's important cultural institutions,¹⁸⁸ theirs was a minority presence in the population of the city. Jews made up a substantial portion of the city's population—almost one-third as of 1915.¹⁸⁹ What this meant was that Jews had critical mass within the city. Jews also were a majority presence in their major industry—the garment industry.¹⁹⁰

Jews managed to retain their "safety in numbers"¹⁹¹ even as they left their old jobs and neighborhoods. City College is an illustrative example of the meaning of Jewish population density for the daily life of upwardly mobile Eastern European Jews in New York. By as early as 1918, the student population of City College was almost 80% Jewish.¹⁹² In her study of Eastern

¹⁸³ See Itzkowitz, *supra* note 72, at 176–77.

¹⁸⁴ See GINSBERG, *supra* note 121, at 79.

¹⁸⁵ Newman, *supra* note 73, at 166. This was not meant as a compliment: Sombart went on to support the Nazis. See *id.*

¹⁸⁶ Other locations were the North End of Boston and the West Side of Chicago. See SORIN, *supra* note 59, at 70.

¹⁸⁷ See GORELICK, *supra* note 56, at 72; see also SORIN, *supra* note 59, at 70 (putting the number at 75% by 1900).

¹⁸⁸ See GORELICK, *supra* note 56, at 72–75, 83.

¹⁸⁹ See GOLDSCHIEDER & ZUCKERMAN, *supra* note 38, at 165. For the methodological difficulties entailed in estimates of Jewish population before the mid-1930s, see IRA ROSENWAIKE, POPULATION HISTORY OF NEW YORK CITY 110–11 (1972).

¹⁹⁰ See SORIN, *supra* note 59, at 76 (in New York, by 1910 Jews constituted 80% of the hat and cap makers, 75% of the furriers, 68% of the tailors, and 60% of the milliners).

¹⁹¹ GORELICK, *supra* note 56, at 179.

¹⁹² See OREN, *supra* note 99, at 40.

European Jews in City College, Sherry Gorelick explains that the Jews encountered a college that was in the throws of Progressive-era growth, secularization, and modernization—a process spurred on at least in part by the threat of leftist activity in which Jews were centrally involved.¹⁹³ Nonetheless, the institution was still largely Christian, taught scientific racism as part of its curricular canon, and was politically conservative.¹⁹⁴ The socialist spirit of intellectual Jewish life in New York hardly animated the official life of the institution. But “Jewish working class students formed a critical mass”¹⁹⁵ at City College and were able to gain their much-needed educational credentials while at the same time generating a leftist intellectual life among themselves. The students clearly “internaliz[ed] the dominant culture”¹⁹⁶ to a significant extent, but they also moved beyond the “official curriculum” and used the institution for their own purposes.¹⁹⁷

Jews who moved (themselves or through their children) into the world of white-collar work maintained critical mass because of patterns of occupational segregation—at times chosen by the Jews, at times imposed upon them.¹⁹⁸ As already noted, Jews were heavily concentrated in the civil service and in teaching.¹⁹⁹ Within the legal profession, Jews were concentrated in government and in Jewish-led law firms.²⁰⁰ Jewish entrepreneurs and business leaders tended to concentrate in sectoral niches in which other Jews were also to be found.²⁰¹ This meant that even those Jews who did not go out of their way to

¹⁹³ See GORELICK, *supra* note 56, at 55–57.

¹⁹⁴ See *id.* at 6, 139–40.

¹⁹⁵ *Id.* at 179.

¹⁹⁶ *Id.* at 189.

¹⁹⁷ See *id.* at 179.

¹⁹⁸ See GILMAN, SMART JEWS, *supra* note 19, at 22 (finding that Jews’ professional choices were shaped by sectoral differences in patterns of discrimination and by family tradition).

¹⁹⁹ See *supra* notes 175–77 and accompanying text.

²⁰⁰ See, e.g., WHITE, INTERVENTION, *supra* note 16, at 156 (describing Frankfurter’s experience of “going from office to office” of non-Jewish firms and being “made to feel as though I was some sort of worm going around begging for a job”). For a later period, see David Charny & G. Mitu Gulati, *Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for “High-Level” Jobs*, 33 HARV. C.R.-C.L. L. REV. 57, n.158 (citing sources); Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 10 LA RAZA L.J. 363, 421 n.97 (1998), jointly published in 85 CAL. L. REV. 1449, 1507 n.97 (citing sources and specifically discussing Cravath, Swaine & Moore).

²⁰¹ For Jewish entrepreneurship, see KAHAN, *supra* note 50, at 129; for business leaders, see ZWEIGENHAFT & DOMHOFF, *supra* note 10, at 25 (noting that “Jews in the corporate elite most often are directors on the boards of companies that were founded or purchased by Jewish individuals or families”).

self-identify as Jews or to associate with other Jews found themselves in largely Jewish milieus.²⁰² Similar patterns existed in housing. Whether because of cohort effects,²⁰³ anti-Jewish covenants and other forms of discrimination, or by choice, Jews tended to suburbanize with other Jews and thus reinforce the density of exclusively Jewish networks of affinity.²⁰⁴ Indeed, most American Jews would never know whether there is anti-Semitism in this country because, as it just so happens, they spend all of their time with other Jews.²⁰⁵

Where non-Jews live and work in Jewish niches they are often expected to develop a modicum of Jewish cultural competence. For example, they are expected to live with those tiny fragments of Yiddish that later Jewish generations have maintained to create and signal their comfort with other Jews. I cringe when non-Jewish colleagues try to use these Yiddishisms and mispronounce them. (I seem to recall being invited to “kibbitz” about something, with the emphasis placed on the last syllable as if the word were “*kibbutz*”). However, I also realize that their very efforts evidence a reversal of the direction of cultural hegemony in certain spheres of American life.

The fact that Jews emigrated and moved upwards in the social hierarchy in sufficient numbers to create critical mass in their occupational and residential niches is only part of the story of how Jews created a comfortable home for themselves in America. The other significant part of the story consists of the many ways in which Jews influenced mainstream American culture. They did so in two related ways: by secularizing and universalizing important aspects of Jewish religious practice, and by secularizing American civic culture itself.

²⁰² See CALVIN GOLDSCHIEDER, *THE AMERICAN JEWISH COMMUNITY: SOCIAL SCIENCE RESEARCH AND POLICY IMPLICATIONS* 24–26 (1986).

²⁰³ By “cohort effects,” I mean that a certain age group of Jews found themselves in the position to take advantage of time-specific economic opportunities (here, that Jews had already come far enough pre-World War II to take advantage of veteran-oriented post-World War II housing programs). For a further discussion of the stages of Jewish economic success, see, for example, Arcadius Kahan, *Jewish Life in the United States: Perspectives from Economics*, in *JEWISH LIFE IN THE UNITED STATES: PERSPECTIVES FROM THE SOCIAL SCIENCES* 237, 239–44 (Joseph B. Gittler ed., 1981) [hereinafter Kahan, *Perspectives from Economics*].

²⁰⁴ For a discussion of suburbanization, see HEILMAN, *supra* note 33, at 20–21. This pattern is not unique to assimilated Jews in the United States. There are striking similarities between the accounts by Michael Walzer (post-World War II Johnstown, Pennsylvania) and Gershom Scholem (pre-World War II Berlin) of their parents seeming to have civil relations with non-Jews, but, in fact, never being entertained in the homes of non-Jews. For Walzer’s account, see Michael Walzer, *Minority Rites*, *DISSENT*, Summer 1996, at 53, 53. For a discussion of Scholem’s account, see BAUMAN, *supra* note 1, at 122. The pattern goes back to the beginnings of Jewish assimilation: Heine was horrified that wherever he went he was surrounded by Jewish-born associates he did not seek out. See *id.*

²⁰⁵ See BAUMAN, *supra* note 1, at 122.

The most prominent example of the secularization and universal adoption of an aspect of Jewish religious culture is talked about frequently in the Jewish cultural studies literature, but seldom anywhere else. It is male circumcision.²⁰⁶ Circumcision was, in its origins and in much of Jewish history, the single most significant marker of (male) Jewish difference. In America, at least at present, male circumcision has become medicalized and is a standard medical practice for Jews and non-Jews alike. While many Jews still have the circumcision performed at home when the child is eight days old in a traditional "bris,"²⁰⁷ rather than in the hospital immediately after birth, that difference rapidly erodes over the life course. Circumcision as a mark of distinction, when it was one, lasted forever.

The medicalization and universality of male circumcision in this country, based upon the hygienic rationale Jewish thinkers set forth for the practice in the late nineteenth century,²⁰⁸ is a highly contingent fact. The medical profession could change its mind as to whether benefits to male genital hygiene from circumcision are outweighed by the inherent risks of the procedure. Any medical debate that has made its way to the television program *E.R.* is likely to be with us for some time to come. If and when medical opinion changes, Jews who seek to circumcise their sons will rediscover what it means to mark one's child at birth with a sign of group membership that is also a sign of group difference.

Jews have made America a safer home for themselves not only by secularizing their own culture, but by dedicating themselves to the secularization of American civic culture. Jews are the major supporters of the American Civil Liberties Union (ACLU), which has had as one of its major commitments the maintenance of strict boundaries between religion and the state.²⁰⁹ That position is of only minor significance to Jews living in majority-Jewish communities or working in majority-Jewish occupational niches. Had there been an official religion of the New York Public Schools in my childhood, the New York local of the American Federation of Teachers would have seen to it that it was Judaism. But for Jews who are members of local minorities, minimizing the public occasions on which they must signal their

²⁰⁶ For discussions on circumcision, see, for example, BOYARIN, *supra* note 55, at 34-62; GILMAN, *SMART JEWS*, *supra* note 19, at 182; Gil Anidjar, *On the (Under)Cutting Edge: Does Jewish Memory Need Sharpening?*, in *JEWS AND OTHER DIFFERENCES*, *supra* note 67, at 360; Sander L. Gilman, *The Jew's Body: Thoughts on Jewish Physical Difference*, in *TOO JEWISH?*, *supra* note 120, at 60, 67 [hereinafter Gilman, *The Jew's Body*].

²⁰⁷ "Bris" is the Ashkenazic pronunciation of the Hebrew word for "brit," which means covenant, and short for "*bris milah*," the covenant of circumcision.

²⁰⁸ See Gilman, *The Jew's Body*, *supra* note 206, at 67.

²⁰⁹ See GINSBERG, *supra* note 121, at 1-2.

difference from the surrounding community minimizes the social costs of being Jews.²¹⁰

Of course, the wall of separation between church and state that organizations like the ACLU desire never has come fully to fruition.²¹¹ In a country in which public Christmas decorations count as "secular" so long as they do not include crèches, many Jews feel as though their hand is forced and that they must introduce "secularized" Jewish religious symbols into public life as well.²¹² In head-to-head competition with public Christianity, public Judaism will always lose. As is the case with circumcision, the civic secularization that has contributed to recreating America as a comfortable place for Jews is highly contingent and cannot be counted upon to remain in place.

D. Jewish Parasitism

Farber and Sherry criticize the view that Jews adapt to surrounding cultures by successfully "imitating cultural norms" without sharing the natives' capacity to be truly creative within them.²¹³ This view is closely related to the debate on

²¹⁰ There are times when the urge to secularize Judaism and the urge to secularize America conflict. The most salient point of conflict in recent years has been the public display of the menorah as part of public "winter holiday season" displays. See *infra* note 212 for a discussion of the issue.

²¹¹ See, e.g., *Agostini v. Felton*, 521 U.S. 203 (1997), *overruling* *Aguilar v. Felton*, 473 U.S. 402 (1985).

²¹² The Lubovitcher Hasidic movement, which is behind the introduction of the public menorah in American civic life, is by no means motivated by a secularization urge. For the Lubovitchers, whose mission is outreach aimed at returning non-observant Jews to religious orthodoxy, the public display of the menorah has deep religious significance. But once menorah display was on the table, many non-religious Jews came to welcome it as a counterweight to the Christmas frenzy in their communities. And the doctrinal pathway to secure menorah display was to secularize the menorah and the holiday of *Hanukah* to which it is tied, just as the Christmas tree had been secularized before it. See *County of Allegheny v. ACLU*, 492 U.S. 573 (1989). I would not go so far as to say, as Heilman does, that the menorah on public display (or, another example he uses, the Holocaust Museum) "clearly became [an] American symbol[]" as well as a Jewish one. HEILMAN, *supra* note 33, at 101–02. Perhaps, however, the menorah and the Christmas tree taken together become a symbol of American religious pluralism. If so, that end is accomplished only by taking a minor Jewish holiday and elevating it to symbolize all of Judaism merely because it happens to coincide with Christmas.

²¹³ See Farber & Sherry, *Radical Critique*, *supra* note 6, at 874–75. In their book (although not in their article), Farber and Sherry further contend that "radicals" see Jewish culture itself as lacking in creativity—in other words, they supposedly see Judaism as inherently parasitic, rather than simply seeing Jewish assimilationist strategies as parasitic. See FARBER & SHERRY, *BEYOND ALL REASON*, *supra* note 7, at 64. "For instance," they state, "radicals certainly never argue that Jewish culture ought to be included in a

Jewish intellectual difference (in which anti-Semites cast Jews as clever but not truly intellectual) and Jewish economic difference (in which anti-Semites cast Jews as successful but not virtuous, as parasitic rather than productive capitalists).²¹⁴ The critique culminates in the rejection of Jewish innovations as being parasitic on, and toxic to, the dominant culture—similar to what, the Nazis, for example, believed of Jewish-created art and music.²¹⁵ For Farber and Sherry, to say that “merit” as measured on tests is not true merit is the same as saying that the products of Jewish creativity are not truly creative.

Farber and Sherry’s association of the notion of Jewish parasitism with the critique of merit is deeply flawed. “Merit” tests do not pretend to measure creative capacity and thus say nothing one way or another about it. To say that they do not test every possible virtue relevant to higher education (or employment) is not to say that those who succeed on the tests lack the characteristics the tests ignore. The tests are agnostic as to the possession of non-tested positive characteristics. Anti-Semitism is hardly agnostic as to whether the possession of “Jewish” intelligence necessarily implies the absence of non-Jewish virtue.

There is, however, an issue worthy of further explanation in the “Jews as parasites” critique of Jewish creativity. The critique posits a particular relationship between the Jews and the dominant society. Jews create cultural products—art, music, literature, criticism, science,²¹⁶ and so forth—but Jews lack the power to determine the place their cultural products will have within the dominant culture. Whether Jewish cultural production is recognized as an event within the dominant culture depends upon its reception; therefore, it lies outside of Jewish control.²¹⁷ In this light, the “parasitism” critique, rather than

multicultural curriculum, as they should if Jews are more than imitators.” *Id.* The exclusion of Jewish studies from the multicultural canon is discussed at length in *INSIDER/OUTSIDER*, *supra* note 13. The reason for that exclusion is far more likely to be the perception (perhaps false) that Jewish interests are already well-represented by the large number of Jews on academic faculties than any sense that Judaism as a culture is not worthy of recognition. *See, e.g.,* Sara R. Horowitz, *The Paradox of Jewish Studies in the New Academy*, in *INSIDER/OUTSIDER*, *supra* note 13, at 123 (“The invisibility of Jewish studies as an academic field . . . is hidden behind the presence of Jews as scholars in all fields.”). For the self-explorations of a number of Jews in academia in a variety of disciplines, see *PEOPLE OF THE BOOK*, *supra* note 13. Law is not one of the academic disciplines that the authors explore.

²¹⁴ *See* GINSBERG, *supra* note 121, at 79.

²¹⁵ These themes are explored in depth in GILMAN, *SMART JEWS*, *supra* note 19.

²¹⁶ *See* Rabkin, *supra* note 44, at 17 (noting that innovations of Jews in the theoretical sciences were not only not accepted, but were also seen as destructive—using the attitude towards theoretical physics as an example).

²¹⁷ *See* SCHOLEM, *JEWS AND JUDAISM IN CRISIS*, *supra* note 79, at 86–87 (“There were misunderstood geniuses among the Jews, prophets without honor, men of mind who stood up

pertaining to something intrinsic to the Jews, becomes a mechanism for describing the contested place of the Jews within the dominant culture. If Jewish innovations are rejected, they are rendered socially sterile, and the social sterility of their works places the Jews in the position of the parasite or pariah through no fault of their own. Cast in these dyadic terms, the parasitism critique is transformed from an attack on Jewish creativity to an explanation of Jewish anxiety.

If the question is whether the creative product of American Jews is ever genuinely accepted as part of the American tradition, it would seem that the answer must surely be yes. The Jews of Hollywood mythologized America and successfully sold that image to the country as a whole.²¹⁸ Jewish composers and lyricists wrote *God Bless America*, *White Christmas*, and *Easter Parade*.²¹⁹ The list is endless. Does it not prove that Jewish products can become American icons?

Yes, if they have no specifically Jewish content.²²⁰ But can Jewish cultural innovations that contain Jewish content count as American? Here the answer is less certain. There is a difference between Jews becoming master manipulators of the language of Christian America²²¹ and the content of Jewish experience being accepted as emblematically American. Barbie was invented by a Jewish couple, but she doesn't look Jewish.²²² The old advertisement that "You don't

for justice, and who also stood up—to an astonishing degree—for the great spirits among the Germans themselves. Thus, almost all the most important critical interpretations of Goethe were written by Jews! But among the Germans, there was never anyone who stood up for the misunderstood geniuses who were Jews. . . . At a time when no one cared a whit about them, no German stood forth to recognize the genius of Kafka, Simmel, Freud, or Walter Benjamin—to say nothing of recognizing them as Jews. The present belated concern with these great figures does nothing to change this fact."). Or, even better: "When [the Jews] thought they were speaking to the Germans, they were speaking to themselves." *Id.* at 63.

²¹⁸ See, e.g., GOLDBERG, *JEWISH POWER*, *supra* note 73, at 286; ROGIN, *supra* note 112, at 84, 112 (discussing *The Jazz Singer*, which was the first talking picture).

²¹⁹ See KALMAR, *supra* note 44, at 132.

²²⁰ See ROGIN, *supra* note 112, at 16 (discussing the immigrant Jewish songwriters who "creat[ed] melting pot American music in the Jazz Age from African American sources"—and not from Jewish sources).

²²¹ For another example, think of the fashion industry, where Ralph Lauren *né* Lifschitz is the creator of a thoroughly anglophilic line of clothes, furniture, and decorating accessories aimed at allowing anyone to appear to be to the manor/manner born. See HEILMAN, *supra* note 33, at xiv. In a similar mode, Miss Manners and Dear Abby are both Jews—whose job is to teach the masses proper upper-crust manners. See Edward S. Shapiro, *The Friendly University: Jews in Academia Since World War II*, 46 JUDAISM 365, 372 (1997).

²²² See Rhonda Lieberman, *Jewish Barbie*, in *TOO JEWISH?*, *supra* note 120, at 108. Lieberman goes on to imagine what it would be like if there were a Jewish Barbie in a parallel universe.

have to be Jewish to love Levy's Rye" proclaimed (performatively—trying to make it happen by proclaiming it so) that a taste for things Jewish has spread beyond the Jews. But one would never say that something is "as American as Levy's rye." Chain bagel shops have spread throughout the country. They are inevitably named after a random Jewish family or after a Jewish-associated New York location, or their name is in Yinglish (for example, "Bagel Schmagel"), or they have pictures of the Jewish Lower East Side on the walls. That looks like the acceptance of something Jewish as something American. However, the popularization of the bagel required that it be stripped of its real Jewishness. Blueberry bagels and bagel "sandwiches" containing anything but smoked fish and cream cheese are not Jewish—even if they are held out as Jewish for marketing purposes.

When Americans laugh at Woody Allen movies or *Seinfeld* episodes, are they laughing at those funny Jews—or are they seeing themselves portrayed on the screen?²²³ Is the utility of Jewish comedians the fact that their audiences can run the risk of momentary identification because they know that in the end they can distance themselves from the comedian's subversive thoughts just by remembering that he is a Jew?²²⁴ When the vast *Seinfeld* audience laughed at the nothingness portrayed on the screen every week, did they see themselves in the characters? Did they still see themselves in the characters during the final episode, when the cruel and heartless New Yorkers (always iconic for Jews, especially when all the actors are Jews)²²⁵ were washed up onto a pristine New England shore and put on trial? What about when they were convicted by a "good" American jury for their callousness and lack of character and lack of ethics towards anyone outside their charmed circle—characteristics portrayed by anti-Semites for centuries as character flaws of the Jew? Or did the characters revert to being just Jews at the end, put on trial by America for their corrupt Jewish values?

²²³ Cf. Maurice Berger, *The Mouse That Never Roars: Jewish Masculinity on American Television*, in *TOO JEWISH?*, *supra* note 120, at 101 (dealing with the removal of Carl Reiner as the star of what eventually became the Dick Van Dyke show to broaden the show's appeal).

²²⁴ Similar questions can be asked about any representation of Jews in film and television. See, e.g., *id.* at 100 (discussing anti-Semitic stereotypes of Jewish masculinity and the significance of the fact that they are often created by Jews, and puzzling over the fact that "Jewish men . . . have represented themselves on television as 'happily subordinated' despite considerable power in Hollywood").

²²⁵ See *id.* at 101 (describing *Seinfeld* as a crypto-Jew living in ethnic limbo). I was also given much to think about by Adam J. Levitin, "Not That There's Anything Wrong With That . . .": *Seinfeld* and the Jew as American Mainstream, *MOSAIC: A REVIEW OF JEWISH THOUGHT & CULTURE*, Winter 1998, <www.hcs.harvard.edu/~mosaic/Seinfeld.html> (manuscript on file with author). My thanks to Matt Kaplan for calling it to my attention.

Despite whatever qualms they may have about displaying their Jewishness, myriad American artists and writers have self-consciously drawn upon Jewish material in their work. Yet, much of their use of Jewish material has been to criticize Jewish culture. Philip Roth's *Goodbye, Columbus*,²²⁶ a canonical example, displayed the emptiness of assimilated Jewish-American life—both for its own sake and as a richly embodied vocabulary for a general critique of bourgeois culture.²²⁷ Jewish writers' portrayals of Jewish culture in a more empathic light at times seem less Jewish upon closer examination. As John Murray Cuddihy has argued (controversially, but in my view convincingly), the portrayal of the relationship between man and God in Bernard Malamud's fiction is more Christian than Jewish.²²⁸ It seems to me that the same can be said of the quest for apotheosis that is the culmination of Henry Roth's *Call It Sleep*.²²⁹ Moving from literature to art, Jewish painters were central to American modern art, but they did not articulate any connection between their art and their Jewishness.²³⁰

Thus, although the Jews in America have succeeded in introducing some elements of Jewish culture into mainstream American culture, there remain serious questions as to whether Jewish cultural production that draws its essence from Jewish life can gain acceptance as quintessentially American. Refusing to ask this question will not make it go away.

²²⁶ PHILIP ROTH, *GOODBYE, COLUMBUS AND FIVE SHORT STORIES* (1959).

²²⁷ See Kleeblatt, *supra* note 120, at 6.

²²⁸ See CUDDIHY, *supra* note 47, at 203–30. (I am not related to Bernard Malamud. As I tell people who ask, there were lots of *melamdim* in the old country.) Cuddihy has much the same to say about Marc Chagall and about “many figures constituting the so-called American Jewish literary renaiss[an]ce in American letters: they arrive on the literary scene by creating a Jewish character with a real Jewish heart, ‘a true Jew, which,’ critic Robert Alter notes, ‘as one often discovers in American Jewish fiction, means that he turns out to be a true Christ.’” *Id.* at 204.

²²⁹ ROTH, *supra* note 53. Alfred Kazin introduces *CALL IT SLEEP* as “the most profound novel of Jewish life that I have ever read by an American.” *Id.* at ix. In the novel, the child narrator is drawn to a Polish friend's rosary, *see id.* at 322–28, lies and tells his rabbi that he is half Christian, *see id.* at 368–69, and finds spiritual resolution in the flames of his near-electrocution, *see id.* at 419. Although the concept of holy light is one he first encounters in Isaiah, *see id.* at 367, his achievement of it is mediated by the rosary, a picture of Jesus, *see id.* at 322, and a break with his family. He then emerges from the flames to fuller Americanization. See Hana Wirth-Nesher, *Afterword: Between Mother Tongue and Native Language*, in ROTH, *supra* note 53, at 458–59 (noting that “the Christian strain in this entire last section is very bold . . . In this climactic chapter, David becomes the paschal lamb, the one only kid in Had gadya, but also a Christ figure, as the Jewish and Christian traditions are conflated”).

²³⁰ See Kleeblatt, *supra* note 120, at 5 (speaking of the Jewish artists' “deracinated” voices).

E. Jewish Self-immolation

Farber and Sherry also proclaim that it is anti-Semitic to think that Jews have succeeded in this country *as individuals* rather than *as Jews*.²³¹ Certainly Jews succeeded “as a people” in the statistical sense that the immigrant cohorts moved up the social hierarchy as cohorts, facing obstacles and using opportunities that were encountered by the cohort as a whole. Of course, not all succeeded—but one does not have to believe that all Jews succeeded equally to speak of the success of the Jewish people in America. But is that *all* that is necessary to the concept of Jewish success as a group phenomenon? The consensus within the field of Jewish studies is that *more* is needed before we can say that the Jews have succeeded in America as a people. Within that field, one is permitted to ask the following difficult questions: What of their Jewishness do Jews take with them when they succeed? Or do they succeed precisely to the extent that they assimilate? How many more generations of assimilation can American Jewry survive without disappearing?

In Europe, the battles for Jewish Emancipation were fought under the slogan (as parenthetically elaborated by Gershom Scholem): “For the Jews as individuals, everything; for the Jews as a people (that is to say: as Jews) nothing.”²³² In order to be accepted, the Jews had to abandon Judaism’s “value-legitimizing powers”—that is to say, they had to acknowledge the inferiority of traditional Judaism.²³³ We have already seen that the Jews of Western Europe engaged in a long experiment with values-transfiguration:²³⁴ they associated the best of Jewish values with the best ideals of the dominant culture and transformed their Jewish identities so that no elements of Jewish particularity were necessary to sustain them.²³⁵ Has a similar process taken place in the United States? And does it entail some of the same risks?

It has, and it does. The very “Jewish values” hypothesis that Farber and Sherry are so quick to embrace is but a variant on the Jewish-espoused notion that the most significant thing about American Jews is that our Jewishness makes us the best exponents of the best of American values.²³⁶ We claim (and

²³¹ See Farber & Sherry, *Radical Critique*, *supra* note 6, at 877–78.

²³² See SCHOLEM, *JEWS AND JUDAISM IN CRISIS*, *supra* note 79, at 63.

²³³ BAUMAN, *supra* note 1, at 106–07.

²³⁴ See *id.* at 129. (“[T]he Judaist tradition was first transfigured and then de-Judaized.”).

²³⁵ See discussion *supra* at text accompanying notes 82–97.

²³⁶ See HEILMAN, *supra* note 33, at 5, 58. Part of the “at their best” comes from the fact that the Eastern European emigration postdated slavery, so Jews, unlike WASPS, are not required to account for how their ancestors in a country with such wonderful values could have condoned slavery. Cf. Lipset, *supra* note 39, at 6 (speaking of American universalism—

it has been claimed for us) that our values have always been “middle class”²³⁷—which is a good thing because Americans think of America as a middle class country with middle class values. We are said to value individualism—which is a good thing because not to value individualism is un-American (as Jewish socialist and communists were so often reminded). If for German Jews, Judaism lined up perfectly with Schiller, American Jewish intellectuals had their own American philosopher-gods.²³⁸ And the list goes on.

Here, as in Western Europe, values-transfiguration has the down side of effacing much that is significant about Jewish history. If in Scholem’s Germany it was the mystical religiosity of the *Ostjuden* that needed to be repressed,²³⁹ in contemporary America it is mostly the history of leftist activism of the immigrant generation that must be sacrificed to the ongoing cause of Americanization. As Gorelick persuasively argues in her study of City College, Jews did not succeed in higher education in New York because of any easy match-up between Jewish and elite Protestant values. Instead, their success required them to “suppres[s] much of their culture and reshape the rest” and thus reflects as much a loss of Jewish values as an expression of them.²⁴⁰ Jews of later generations continue that process by ignoring the conflicts that underlay earlier generations’ assimilation.

There are other sources of dissonance for the values-transfiguration approach to Jewishness as well. Orthodox Judaism is in resurgence in the United States at present and must be accounted for by more conventionally Americanized Jews. There are many American values that Jewish orthodoxy cannot be said to share (modern American notions of gender equality among them). Even more significant in the long term is the fact that the orthodox are Jewish particularists. They simply do not abide the notion that the best within Judaism can be secularized and Americanized. And they are avid participants in the American political and legal processes, meaning that the values-transfiguration approach to Judaism is no longer the only approach to which

leaving “slavery and the black situation apart”—as though that can easily be done).

²³⁷ Precisely what these “middle class values” are can get a bit vague: are the values that “businessmen and intellectuals” have in common, *see* Lipset, *supra* note 39, at 15 (quoting Nathan Glazer), more important than the ones that differentiate them? On which subject *see*, for example, ROIPHE, *supra* note 80.

²³⁸ *See, e.g.,* Edward S. Shapiro, *The Jewishness of the New York Intellectuals: Sidney Hook, A Case Study*, in AMERICAN PLURALISM, *supra* note 30, at 157 (arguing that for Hook, a philosopher who studied with John Dewey, Jewish values lined up perfectly with Deweyite democratic liberalism).

²³⁹ *See* discussion *supra* note 90.

²⁴⁰ *See* GORELICK, *supra* note 56, at 9, 191; *cf.* Shapiro, *supra* note 78, at 372 (discussing that elite schools generally became more friendly towards Jewish applicants because the Jews “no longer stood out from the other students”).

Jews and non-Jews are exposed. Dissonance with the values-transfiguration approach also comes at present from the state of Israel. Can it fairly be said that the values of the current Israeli leadership are consistent across the board with American values? Are their values less "Jewish" than ours? Who can be the arbiter of that claim?

In addition to requiring the selective rewriting of Jewish history and the story of contemporary Jewish self-expression, the values-transfiguration route to assimilation has the disadvantage that it cannot stop the dominant society from changing in less Jewish-friendly directions. Just as Austria moved back towards its particularistic and Catholic roots and left the German-universalizing Jews in the cold, America still retains its tendencies towards seeing itself as a Christian nation. As the Jewish-aided secularization of public life fades under conservative courts,²⁴¹ Jews will be reminded that "Christian" sometimes means Christian and not Judeo-Christian and that no amount of creative self-abnegation can fill the gap between the two.²⁴²

Some American Jews have not bothered preserving their Jewishness by self-consciously associating American values with Jewish values. Some have simply disassociated themselves from the Jewish community and no longer try to experience any aspect of their Americanness as Jewish. Within this group, some may retain a mild form of attachment to one or another Jewish tradition, whether for reasons of guilt or genuine affection.²⁴³ But many within this group have no commitment to transmitting these vestigial Jewish attachments to the next generation. This posture is not limited to intermarried households: indeed, many intermarried households retain an attachment to Judaism and many Jewish-Jewish couples drift from the tradition together. But the very magnitude of intermarriage suggests that the powers of inertia can no longer be counted upon to hold the Jewish community together.²⁴⁴

²⁴¹ See discussion *supra* notes 228–29.

²⁴² Cf. GOLDBERG, *JEWISH POWER*, *supra* note 73, at 73 (attributing to Goldscheider the statement that, at bottom, Jews are "Jewish because they're not Christian").

²⁴³ See *id.* at 9 (Judaism is becoming a personal attribute "which . . . Jews feel free to adopt or discard at will").

²⁴⁴ On intermarriage and the debate over its significance, see HEILMAN, *supra* note 33, at 131–33. Calvin Goldscheider, whose views on this issue Heilman discusses and disagrees with, takes the position that intermarriage is not a serious threat to Jewish continuity because the intermarried remain socially and economically connected to other Jews through occupational and residential ties. See *id.* at 133. To Heilman, however, this is not enough. His stress is on the trend of the dissipation of intense Jewish connection as seen intergenerationally. According to Heilman, among children with two Jewish parents, 36% eventually entered mixed marriages; among children with only one Jewish parent, 95% eventually married non-Jews. See *id.* at 131. It is hard to be excited about the intergenerational survival of Judaism in America in light of these numbers—particularly when

In light of these concerns, how can one *not* ask the question whether the success of individual Jews in this country tells us anything about the success of the Jews as a people here? The Jewish experience in the United States is not just a boilerplate for assimilatory success. It is also a scale on which the costs of assimilation can be measured.

IV. THE SOCIO-ECONOMICS OF JEWISH SUCCESS IN AMERICA

Just as "Jewish values" cannot account for Jewish success in America, it would be a mistake to think that the full explanation lies in the arguments explored in the previous section. There is another important piece of the story of the Jews in America to tell—one that will seem prosaic to some, but will be perceived by others as presenting the greatest challenge of all to the origin myth of the descendants of the Eastern European Jews who came to this country in the four decades before 1925. Our families have taught us that our ancestors came to America from Eastern Europe with nothing—as "the poorest of the poor."²⁴⁵ We have also learned that their timing was terrible in that whatever economic progress they had made in the early years was wiped out by the Depression. Indeed, it is only with reference to their original poverty and the unfortunate timing of their emigration that their later success seems so spectacular. These stories, too, are receiving a more complex and nuanced telling in the contemporary Jewish studies literature.

It is true that the Jews who came from Eastern Europe came with very little money. But the Jews brought with them a set of socio-economic advantages unmatched by any other contemporaneous immigrant group (or by black migrants from the South). The Jews advanced as quickly as they did in America in large part because they were already skilled, urbanized, and proletarianized before they arrived and because their skills (not their "values," but their occupational skills) were appropriate to growth sectors of the Eastern United States' urban economy.²⁴⁶

combined with the relatively weak level of attachment to Judaism in non-intermarried households. The vast majority of American Jews are counting on someone else "to keep the flame burning" and doing very little about it themselves. *See id.* at 66.

²⁴⁵ Handlin, *supra* note 67, at 367.

²⁴⁶ For a treatment of these issues in the context of the debate over why some ethnic groups "succeed" while others "fail," see STEPHEN STEINBERG, *THE ETHNIC MYTH: RACE, ETHNICITY, AND CLASS IN AMERICA* 82–105 (1981). Another advantage the Jews had over many other ethnic groups in the United States was that they had already experienced being members of a hated minority in their countries of origin—so that adjusting to minority status in this country did not slow them down in the least. For the same reason, repatriation to Europe was far less of a temptation for Jews than for other immigrants, and thus the task of succeeding in America was faced by the Jews

The emigration of Jews from Eastern Europe had the appearance of a mass emigration (given its sheer size), but in fact emigrants self-selected for their likely ability to survive in America.²⁴⁷ Of the Jews who came to America from Eastern Europe between 1899 and 1914, almost two-thirds had previous experience in manufacturing.²⁴⁸ Half of those with manufacturing experience had worked in the clothing industry in Europe, often under Jewish factory owners.²⁴⁹ These already-trained workers were rapidly absorbed into the growing American garment industry, which had just completed the shift to factory production of ready-to-wear clothing and was positioned for rapid growth.²⁵⁰ Jewish entrepreneurs established themselves rapidly in the American garment industry.

Working conditions in the industry were hardly desirable, and wages were lower than average wages in manufacturing.²⁵¹ But the garment industry had certain advantages. Jobs were readily available to Jews well before they had learned English, and so Jews were able to start earning wages very soon after they arrived. Home labor was a possibility within the industry, which permitted newly-arrived families to utilize the labor of mothers of infants and that of older children to boost family income.²⁵² The "barriers of entrance into entrepreneurial activity" were low: there was a real possibility of workers amassing sufficient capital to become owners.²⁵³ There was considerable vertical integration in the clothing trade, and thus there was room for Jews to advance from operating machines, to jobbing, and then to retail sales.²⁵⁴ Finally, Jews came to the United States already exposed to trade unionism and effectively unionized to improve conditions in the industry. Similar patterns

with the highest possible level of seriousness. For a discussion on repatriation, see, for example, THOMAS KESSNER, *THE GOLDEN DOOR: ITALIAN AND JEWISH IMMIGRANT MOBILITY IN NEW YORK CITY 1880-1915*, at 28-29 (1977).

²⁴⁷ See GOLDSCHIEDER & ZUCKERMAN, *supra* note 38, at 163. Many have written about the skilled nature of the emigrants. See, e.g., KAHAN, *supra* note 50, at 101-17; OREN, *supra* note 99, at 19; PERLMANN, *supra* note 148, at 136-37; Kahan, *Perspectives from Economics*, *supra* note 203; Lipset, *supra* note 39, at 13; Sacks, *supra* note 175.

²⁴⁸ See KAHAN, *supra* note 50, at 103 tbl.1. "The selectivity of the emigration can be seen by the fact that mechanical and manufacturing pursuits were less well represented among all Jews in Eastern Europe than among those who chose to emigrate." GOLDSCHIEDER & ZUCKERMAN, *supra* note 38, at 96.

²⁴⁹ See KAHAN, *supra* note 50, at 103 tbl.1.

²⁵⁰ See *id.* at 103-04.

²⁵¹ See *id.* at 105.

²⁵² See *id.*

²⁵³ See *id.*

²⁵⁴ See *id.* at 107.

existed in other areas of traditional economic activity of Eastern European Jews, especially in commerce. All of these factors translated into the Jews having higher earnings than did many other immigrant groups. Higher earnings had important implications for upward mobility. Higher parental incomes, for example, made it possible for Jewish parents to forego the income of their children and permit them to remain in school.²⁵⁵

The importance of the Jewish immigrants' early foothold in the industrial and commercial economy was magnified by the timing of economic setbacks and opportunities in America.²⁵⁶ The Eastern European Jewish immigrants arrived just as educational and civil-service reform began to create defined job-ladders for those with educational credentials.²⁵⁷ Their greater ability to subsidize their children's educations thus had immediate payoffs that might have been lacking had they arrived twenty years earlier.²⁵⁸ World War I brought with it a boost in domestic economic activity and opportunity for new entrepreneurial ventures. Even small entrepreneurial successes could make the difference in the capacity of parents to invest in their children's educations (whether by payment of tuition or foregoing of children's wage contributions to the household). These early investments in education resulted in rapid Jewish movement into white-collar work in the years prior to the Depression.

The Depression did not in fact wipe out the Jews' economic progress—particularly for those families that had already broken into white-collar work. Although the Depression was a tremendous economic setback even for white-collar workers, they fared better than did industrial workers.²⁵⁹ Ironically, the problem of unemployment in white-collar work had some beneficial effects on Jewish upward mobility. Young men and women who could not find white-collar jobs often chose to stay in school longer (and thus advance further towards the professions) than they would have had jobs been available. For those who could not wait, their years in school could be converted into success on competitive exams for jobs in the burgeoning civil service. And for the most highly educated Jews, the harshness of Depression conditions helped to blunt the impact of the anti-Semitism that still stood as an obstacle to their success. As Oscar Handlin explained of his experience as a budding American historian (a

²⁵⁵ See GOLDSCHIEDER & ZUCKERMAN, *supra* note 38, at 168.

²⁵⁶ See Kahan, *Perspectives from Economics*, *supra* note 203, at 239–44.

²⁵⁷ See GORELICK, *supra* note 56; see also GOLDSCHIEDER & ZUCKERMAN, *supra* note 38, at 168.

²⁵⁸ See GORELICK, *supra* note 56, at 84.

²⁵⁹ See Deborah C. Malamud, *Engineering the Middle Classes: Class Line-Drawing in New Deal Hours Regulation*, 96 MICH. L. REV. (forthcoming 1998). On the greater participation of Jews in white-collar work, and on the difficulty of defining the category, see WENGER, *supra* note 176, at 15, 18.

field that had not yet opened to Jews) in the Depression, it was a comfort to him that there were no jobs for anyone—not just for him.²⁶⁰ “My personal situation just differed in degree from that of everyone else.”²⁶¹ World War II brought its own set of economic opportunities. The G.I. Bill made it possible for another generation of Jews—those who had finished high school but had not finished college before serving in the armed forces—to secure higher education (and, at the same time, aided in the geographical dispersion of the Jews throughout America). Jews were then in the position to benefit from the explosion of the professions in the post-World War II economy. Jews were able to claim their fair share of these opportunities because of the growing rejection of anti-Semitism in America in the aftermath of the Holocaust.²⁶²

At all of these stages, readiness was all. The Jews were able to benefit from the opportunities the times presented (and minimize the impact of some of the worst downturns of the times) to a greater extent than were other groups because of the jump-start made possible by the skill endowment of the immigrant generation. The American Jews’ central story—of how we went from the bottom of the economic heap to its top in a few generations—must yield to a more complex understanding of the socio-economic situation of the immigrant generation and its implications. This is not to say that the advantageous socio-economic position of the immigrants accounts for all of Jewish success in America. The best study of precisely that question concludes that it does not.²⁶³ But it is an extremely important part of the story.

V. CONCLUSION

Now that the “Jew taboo” has been breached, it ought not be reimposed. The Jewish and black experiences in America will inevitably be compared, and rightfully so. One cannot defend the blacks’ continuing need for affirmative action without explaining why the Jews (or any other group, for that matter) succeeded without it. Lifting the taboo has other advantages as well. I have often thought that Asians are being assimilated in America not as whites, but as

²⁶⁰ See Handlin, *supra* note 67, at 363–64.

²⁶¹ *Id.* at 363.

²⁶² See LEONARD DINNERSTEIN, *ANTISEMITISM IN AMERICA* 150–51 (1994). Thanks to my colleague Eric Stein for reminding me of this factor on the basis of his own experience with law firms and the State Department in the 1940s.

²⁶³ See PERLMANN, *supra* note 148, at 208–09. In his study of Providence, Rhode Island, Perlmann finds an unexplained residual that he suggests might well be accounted for by (good) Jewish values. Interestingly, he does not think that one must consider (bad) African-American values in accounting for the (bad) economic situation of blacks in Providence.

Jews. If I am right, then Asian-Americans and other groups choosing to follow (or being positioned to follow) the Jewish model have much to welcome, much to fear, and much to learn from it.

In thinking comparatively, one must also think contextually. Farber and Sherry are wrong to think that superior Jewish values (to whatever extent they exist and were transmitted to the immigrant generation and beyond) are the sole permissible explanation for Jewish success in America. The socio-economic advantages with which Eastern European Jewish immigrants arrived and the unique sequence of historical opportunities they encountered in America are also part of the story. So, too, are the historically accurate underpinnings of the explanations Farber and Sherry dismiss as anti-Semitic. Jews knew how to leverage their economic and political power, and they reaped advantages from the fact that another group—blacks—occupied the lowest rung on America's racialized social ladder. Jews in legal academia ought not take offense at the inclusion of these historical facts in the societal debate on affirmative action.

It is equally important to the full telling of the story, however, to acknowledge that Jews still have reasons to be anxious. Jews have become white in America, by and large. But there are limits (geographical and cultural) to Jewish acceptance in America. If the brief hegemony of civil rights liberalism in American public discourse comes to an end, those limits will come more to the fore. There are also costs that the Jews have borne—both as individuals and as a community—in return for their success. Blacks ought not accuse Jews of ignoring their white privilege when Jews insist that *these* historical facts *also* find a place in the debate.

